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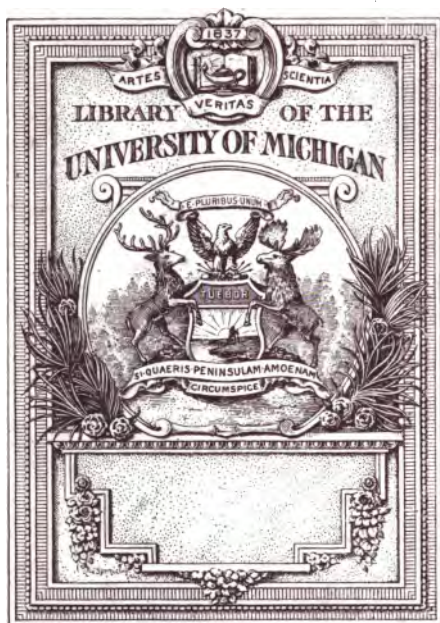
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CARL H. MOTE

INDUSTRIAL ARBITRATION



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## **INDUSTRIAL ARBITRATION**



# INDUSTRIAL ARBITRATION

A World-Wide Survey of Natural and Political  
Agencies for Social Justice and  
Industrial Peace

*By*

CARL H. MOTE

AUTHOR, WITH JOHN A. LAPP, OF  
LEARNING TO EARN

INDIANAPOLIS  
THE BOBBS-MERRILL COMPANY  
PUBLISHERS



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BROOKLYN, N. Y.

031016 F.S.

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## INTRODUCTION

Originally undertaken with an object of finding some tangible device for the prevention of strikes and lockouts, if any such device existed, this work in its present form aims to present a consideration of those devices now extant. It aims to present certain pertinent facts showing how the various devices or political agencies have worked or have failed to work. The study is meant to be an impartial discussion of industrial conciliation and arbitration and of social and industrial conditions, which, in the author's opinion, have a direct bearing on the results of legislative methods.

Although there appears to be little real hope in the promises of temporizing processes, certain *basic* reforms are important and these have been emphasized.

Here in America, we have been impressed by the thoroughness with which Germany appears to have mastered industrial processes. This scientific thoroughness was well understood by most students at the outbreak of the present war and is the keynote of the autocratic organization of the German Em-

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pire. It was well fitted to withstand the strain of a devastating war. After the war, Germany may find it necessary to rebuild her industrial system on more nearly democratic foundations. Rebuilding on this plan will certainly be necessary if, perchance, the inefficient democracies of Great Britain and France emerge triumphant from this colossal struggle with precisely organized and efficient autocracy.

Measures adopted by the English government, since the beginning of the war, to accelerate industrial processes and in which the workers have yielded largely to the economic demands of the nation may be regarded as the sequel, in a crisis, to a program of social and industrial legislation successfully carried out during the last ten or fifteen years. The mixed success of David Lloyd-George, however, can not very well be compared to the success or failure of devices for industrial peace in normal times.

With the exception of the Chicago street railway strike, the settlement of which in this country certainly supports the contention that industrial peace is more probable when labor is well organized, there were no especially disastrous strikes in 1915 in the

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United States. Many new trade agreements were ratified, many renewed, and in a few cases agreements were broken or abandoned.

The Industrial Relations Commission, created in 1912, had not reported when this volume was finished. Although the work of the commission, especially that of its chairman, Franklin P. Walsh, has been bitterly assailed in some eminently respectable quarters, the assaults appear to have emanated from a misunderstanding of the purpose for which the commission was created. As a matter of fact, the commission has performed a most helpful mission in behalf of a better understanding of the basis of industrial peace. The chairman of the commission was well equipped for the duties of a rigorous investigation and the publicity he obtained for his work has been of the very greatest value. The hearings served to disclose the "seats of the mighty," the seats of industrial and political tyranny, and to suggest certain first steps which may be taken as the basis of greater harmony in our most aggravated industrial centers.

Very little has ever been written to show the underlying reasons why political agencies, conciliation

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and arbitration devices, fail to produce expected results. In fact, very little has been written that gives a comprehensive view of the many schemes in operation. So far as possible, this is the purpose of this volume. Certainly, no subject commands a more wide-spread interest to-day than the waste and losses due to strikes and lockouts. This is more particularly true since the causes are identical with those of our unpreparedness for peace and our unpreparedness for war as well.

It has been suggested that the sources from which certain chapters of this work are drawn may not be wholly trustworthy; that the reports of state boards of arbitration naturally claim a liberal measure of success for this particular agency. The issue, however, is unimportant. It was taken for granted that they would present their best case. Assuming that they have done so, they nevertheless have failed to establish the adequacy of conciliation and arbitration by state agency and for this reason primary measures are advanced in preparation for an era of fundamental harmony between Capital and Labor. If the reader, therefore, is impressed with the emphasis placed on social conditions among

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workers, in a volume purporting to deal with conciliation and arbitration, he should bear in mind that the author has not been unmindful that social conditions among workers determine largely the success or failure of conciliation and arbitration.

CARL H. MOTE.





# Industrial Arbitration

## CHAPTER I

### ELEMENTS OF A VAST PROBLEM

**E**VERY word that has ever been written about Capital and Labor has one focus of interest. That focus is an intangible ideal of relationship between two social factors which everybody has sought and nobody seems to have found. If any one were able to offer an ideal it might not have been necessary to write this book. Nobody seems to know quite to what end we are working. No other realm of our social life is more barren of definite, universal ideals.

The struggle for a larger dish of porridge among small business men, trades people and farmers is a problem in which the rest of the world does not seem to be particularly interested, but when a large body of people bind themselves together in one way and

another and present a demand collectively, the problem assumes a wider significance.

The question of a little more porridge for one group and a little less salad for another, involving a wide range of standards from private exploitation of the wage earner to collectivism and from collectivism to syndicalism, is no simple one. Actually it is the basis of the conflict between Capital and Labor. Whether the Sherman act should exempt trade and labor unions; whether the "open" or "closed" shop shall prevail; what shall be done about sympathetic strikes and jurisdictional disputes between trade unions; what about the boycott, the blacklist and the picket; what about sabotage?—these are all incidental and minor questions as compared to that of how the profits of industry will be divided between the master and his men. Must the men be content with a subsistence wage or are they entitled to a subsistence wage plus some luxuries, and if so, how many or what? Or, is industry to be managed tacitly upon a cooperative basis and are the men to share with the master the profits of production? If so, how are the profits to be divided? The master's contention is for the lion's share of the profits because he risks his capital in an enterprise. He is the *entrepreneur*. Yet he does not for-

bear to reduce wages when business is bad and profits are low. He would deny the right of his men to share the profits from his capital and their labor when profits are abnormally high, yet he would reduce their wages when the earning power of his capital and their labor is impaired.

When any one talks about industrial arbitration, he at once raises every problem that has to do with the relation between Labor and Capital. Having raised every problem, he may wrestle with them until his mind grows weary and his heart quits throbbing without ever knowing very much about the point at which he is trying to arrive. The question of temperance is a simple one beside that of meting out justice to Capital and Labor. No one believes very ardently that intemperance is defensible, at least under average conditions, and the ideal in this problem is a very definite one. It may be difficult to rid great cities of vice, yet most every one is willing to admit the end to which our crusaders labor. Likewise, men may differ about the modern application of eugenics, but they do not disagree about the worthy purpose of biological fitness. While these problems seem to abide with us, any one who cares to attempt a solution is not wanting in aims or objects.

Not so with the seemingly irrepressible conflict between master and men, employer and employee, the bourgeoisie and the proletariat, Capital and Labor!

Socialists have pitched their fight against the present industrial order on the theory that there is a class consciousness in the industrial world and that Capital and Labor represent fairly the division of the industrial world into two great classes. If the Socialists are correct, their philosophy must be accepted as the proper basis for finding the ideal. If they are wrong, their philosophy will not avail much. If they are partly right and partly wrong, conclusions must be tempered by such limitations as appear in an examination of our industrial fabric. Socialists proceed on the theory that Labor and Capital have nothing in common; that industrial warfare is therefore inevitable. In fact, Socialists welcome the industrial conflict as a means by which the socialized state is to be made a fact.

If our present civilization amounts to anything, it is difficult to get the Socialist view-point. Much may be said for and against the skyscraper and the railroad, but it is hard to conceive how they might have been builded without the cooperation of the two factors in industry. Furthermore, Socialism

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espouses the cause of only one party in the alleged inevitable conflict and would raise the proletariat only to higher and higher pinnacles of privilege. Socialism ignores the interests of the capitalist, the small business man, the farmer—the proprietary class. It offers no hope and no encouragement to such as these. Some Socialists will dispute this point but they can hardly make their case even though they were able to change human nature, a program with doubtful consequences.

After all, the Socialist may be nearer right than anybody else. He is so if the readjustment between Labor and Capital is to be a readjustment in one direction only; if Labor is to gain what Capital is to give up and if the man who is part laborer and part capitalist is to be ignored altogether. The Socialist program is replete with suggestions as to how the readjustment may be accomplished. But we should ask ourselves whether the collectivism of the Socialists is the suggestion we want to follow and whether we want to precipitate the revolution which collectivism involves. Do we want to ignore the interests of the small business man, the farmer—the man who is part capitalist and part laborer and whose concern in solving the problem is not a direct one? Do we want to turn our backs on a century of

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kaleidoscopic industrial and commercial magic or suddenly pronounce the era of private enterprise a failure? Are we willing to admit that the present régime has done its work and that the time has come to usher in a new order of society? Some of us are willing to answer all these questions in the affirmative. A majority are not. All of which neither dispels our confusion nor discloses, amidst the confusion, even the vague outlines of an ideal.

With every shade and measure of justice possible from peonage to syndicalism and with philosophies which represent these varying measures of industrial justice, it is going to be rather difficult to establish an ideal. Some one may rise up to suggest a middle ground, but who knows what a middle ground is, or who believes it would satisfy anybody if a middle ground were found? Any device for industrial arbitration is not going to recognize the validity of peonage. Nor are the syndicalists likely to witness the fruition of their ideals in any award which an industrial arbitration board may hand down. Between these two opposite poles there is a vast unexplored wilderness, a confusion of ideas and ideals that baffles any man who seeks a fair remedy. Perhaps we shall never find a panacea. Prob-

## ELEMENTS OF A VAST PROBLEM 7

ably we must content ourselves with palliatives and be resigned to their discovery from time to time under new and changing conditions. Our social focus is subject to incessant change. What is good for the present generation is obsolete for the next. Is it not fair to believe that we can hope only to do a few of the things in the present generation that seem most timely and proper? Perhaps it is too much to expect to find a fixed ideal in these days of political, social and industrial revolution.

With all that has been done, it does not seem that strikes are becoming less frequent in this country. Four of the most disastrous strikes in the history of the country have occurred in the last few years. The strikes of the French government employees in 1909, the English railway strikes of 1911, the general strike in Italy, the miners' strikes in Colorado and Michigan, offer little encouragement to the inventors of devices now extant for adjudicating industrial controversies. Of course, it may be that the cause of the trouble is not industrial unrest so much as a deep-seated spirit of revolt in the hearts of men and akin to the militancy of an army, surmounted with banners and stepping to the tune of martial music. The world has been at peace for a



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long time and who knows but this so-called industrial unrest is merely the effervescence of a rampant spirit of revolution abroad in the world.<sup>1</sup>

To call forth an idea suggested by William James in his *Moral Equivalent for War*, perhaps our strikes and lockouts are the immoral equivalent of war, the price we pay for nearly a half century of world peace. If this is so, may we not expect to find a working basis in a moral equivalent for industrial warfare? Frankly, it would appear that a moral equivalent does exist and I believe that it has appeared in the new spirit of inquiry, examination and introspection now causing old thrones to totter and old bulwarks of privilege to crumble. The search for the ideal, we may find, is quite as invigorating as the pursuit of, or progress toward, the ideal.

Specifically, no social or industrial question has arisen anywhere but has some relation, proximate or remote, to the political systems under which we live. It is the demand for a larger measure of so-called industrial democracy which has set on foot

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<sup>1</sup> When this was written the European war was merely threatened. It was not a fact. The statement may stand, however, with the further statement that industrial unrest is almost certain to subside with the end of the war. If English unionists pursue their struggle, even during the war, it goes to prove only that a considerable portion of the English working men, having had no part in the war, are not yet able to accept it as a serious crisis in which their government is involved.

an introspective examination of our political institutions. Lately we have learned in this country that political freedom is no end in itself; that it is futile unless it raise to a plane of greater independence economically the mass of our people.

Former President Roosevelt in his *New Nationalism* and President Wilson in his *New Freedom* stopped a long way short of the ideal, though the former seems to have been nearer the goal because he evidently had an ideal in mind. Mr. Wilson appears to hold that political freedom is everything; that all the rest follows after that. As a matter of fact, it does not follow necessarily, and experience shows that it has not always done so, as witness the doubtful success of direct primaries, the initiative, referendum and recall in some states.

But industrial democracy, so-called, is no ideal at all. It is merely a term that may mean everything or nothing.

This country has proceeded very far in the direction of political independence and it does not seem that the barriers still remaining will long prevail. Men may resist and oppose such institutions as direct primaries, the initiative, referendum and recall, but they are the inescapable response to a growing need for a government which will concern itself

with the intimate and human affairs of life rather than the "red herrings" of obsolete political platforms.

"Give the people more power," is a current slogan which, however, is meaningless unless the people are educated to use the new power wisely. It is not sufficient to give the people more power without tangible suggestions as to what they are to do with it. Fortunately, a program is not wanting—a program that has a direct bearing on the subject of this book; a program that, to some degree, answers the question, "What shall we do to be saved from the inhumanity and wastefulness of industrial warfare?"

It is a sweeping program of social and industrial measures that will take care of our most aggravated examples of industrial iniquity. It is a program of primary importance and fundamental relation to the worker's welfare. But it is no Utopia because there is nothing about it that is fixed, nothing permanent, nothing very definite.

The mere fact that we have failed to find a panacea to curb inordinate ambitions and aspirations of master and men is no proof that the history of a world-wide, century-old effort to find such a panacea is wholly uninteresting. Even though we find

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legislative taboos in England, France, Germany, Australia, New Zealand, Canada and our own country have been almost universally unsuccessful in securing industrial peace, an examination of those failures will be a source of helpfulness to the students of our paramount world problem. If the world-wide failure of the taboo is established, perhaps that failure will be suggestive of additional steps that may be taken to accomplish what the taboo has failed to do.

There is just one instance, New Zealand, where the taboo has worked better than anywhere else. It may be interesting to seek the causes of its success. It may be a source of enlightenment to find that the taboo has worked well in New Zealand and Australia because it was not much heeded there; because its adoption was prefaced by a code of primary and constructive industrial and social measures, in operation when the taboo was invented; also, because that code has been supplemented from time to time by a comprehensive program of measures that reflects the most intimate concern of the government in the health, well-being and comfort of its working people.

But we can not be quite sure that the workers of New Zealand will always be willing to accept a

wage which constitutes a comparatively small share of the profits of industry. Who is able to say that, even though workers anywhere are assured of every comfort of life, they will be content with comforts, alone? Who knows when they will rise up and demand to share, with the man who risks his capital and directs enterprise, the luxuries that he enjoys? Under our present economic order it is difficult to maintain that any particular measure of industrial justice, short of a measure which gives the worker an equal share with the master, will always be satisfactory to the worker. Any one who sets a limit short of this mark must do so arbitrarily, and do so disregarding the economic tendencies of several centuries. If, however, we find certain things which experience seems to show ought to be done now, may we not leave the discovery of our Utopia to the fate of generations, wiser by our experiments and our experience?

Among many peoples, it may be surprising to find the endeavor to avert controversies and disturbances has attributes of striking likenesses. Monopolistic combinations of Capital and of working people, including the right of workers to organize, restriction of apprentices, an unskilled surplus, wages, hours of labor, cost of living, sympathetic strikes, juris-

dictional disputes, sabotage, the boycott, the blacklist and a score of other less important manifestations of an unceasing conflict—all are problems common to every country where industrial development has reached an advanced stage.

1. Most people acquiesce in the wisdom of capitalistic combinations. Even those who oppose are not able to present an alternative that squares with the principle of economic production. By no means is this the case with labor organizations. Combinations of Capital still resist combinations of Labor and the so-called public either looks on with ill-concealed disgust or is openly arrayed on one or the other side of the controversy.

2. The right of Labor to organize precipitates a clash between two opposing theories in industry: First, the arbitrary right of the employer to control every element of his enterprise, the privilege of getting his labor where he can get it cheapest and of imposing whatever conditions his humanity or inhumanity inspires; secondly, the right of the workers to combine for mutual self-help against their employer and to resist his will with the strike, the boycott and the picket, either peaceably or by force. One group of Socialists adheres to peaceful methods. Another group openly advocates violence.

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The latter group comprises the syndicalists, whose most powerful organization in this country is the Industrial Workers of the World.

Trade and labor unions have served to raise wages and working conditions of their membership, but they accomplish little directly for the working men outside the pale of organization. In the United States, not to exceed one-sixth of the wage earners belong to organizations which practise collective bargaining. Five-sixths of the wage earners constitute the surplus available supply of labor. It is here that wages and working conditions are subject to the caprice of the employer. It is here that he is able to make his will the law of industry. This fact may be interpreted as an argument in favor of organization. But conceding the thorough organization of all working people, many problems yet remain and trade unionism is not wholly satisfactory in a country where individualism has been the dominant stepping stone of human endeavor, because it puts the efficient and the inefficient worker in the same straight jacket. There is something dull and prosaic in the idea of putting every man on the same plane and limiting his progress by the progress of the group or crowd in which he toils. There is something repugnant to every man in the tyranny

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of majorities; something discouraging, something devitalizing. On the other hand, the trade union is an institution by which a considerable number of workers have been able to raise themselves out of the slough of despondency; an expression of chaotic and cataclysmic mutterings and murmurings reduced to a philosophy, translated into a "cause." The organization of one-sixth of the workers, it may be said, points the way to the other five-sixths. Organization is the stepping stone of the unorganized. It is a command to the unorganized to go and do likewise.

3. Restriction of apprentices is merely one method by which trade unions seek to limit the supply of labor within a particular trade and to protect themselves against recruits from the unskilled surplus.

4. Wages and living are the subject of endless controversy. Not only does the question of wages involve the division of porridge at a particular time, but it involves frequent alterations in the portions because the cost of living is never fixed and working people have very much to say about the purchasing power of their wages. In the last twenty years in this country, the tendencies of wages and living both have been upward, but the rise in wages



has not been so great as the rise in living and this is the cause of unceasing controversy and intermittent conflict. It is likewise true the world over.

5. Hours of labor have a double-barreled significance. Not only does the reduction of hours afford the worker more time for leisure and the enjoyment of life, as leisure reflects enjoyment, but reduced hours may mean and sometimes does mean a curtailment of labor's output, thus increasing the demand for labor and consequently the rate of wages.

6. Sympathetic strikes—the stoppage of work in one industry to promote the success of a grievance in another—represent nothing more than many units with common aims acting together. Sympathetic strikes are the answer of Labor to the secret or open combinations of Capital. One is no more defensible than the other. If the issue of wages, hours and working conditions is one to be settled arbitrarily by employers, are not employees warranted in summoning their combined strength to defeat the imperious ultimatum of the employer? If one has the capitalistic view-point, he is not very likely to indorse a sympathetic strike, but if he has another view-point he is likely to believe the sym-

## ELEMENTS OF A VAST PROBLEM 17

pathetic strike amounts to a fair method of retaliation.

7. Then, there are the jurisdictional disputes between labor and trade organizations which the sympathetically-minded may regard as one of the unfortunate by-products of a very wise system, and which the contrary-minded are likely to regard with embittered opposition.

8. Sabotage, as openly urged by one working men's organization, is a deplorable expression of a class grievance. But can we say very much in behalf of an industrial epoch that gives birth to an expression of violence? Is it not likely that somewhere we have failed—failed to erect the proper safeguards against the distress of a not inconsiderable mass of humanity? Are we to believe blindly that there are no excuses for and no extenuating circumstances connected with the philosophy which espouses direct action? The history of strikes has been written in blood. It is a history replete with nauseous disclosures of working conditions. Nor must we forget the private detectives and special police of those employers who maintain a despicable system of espionage in season and out of season, strike or no strike.

So long as nations fly at one another's throats for some commercial advantage of doubtful value, may we not expect the worker to believe he has the right, even though he dare not exercise it, to use force, if necessary, to obtain a minimum measure of justice? We eulogize the heroes of past wars but we condemn with scorn the man who resorts to less drastic measures to win a strike. Yet the worker has little, if anything, to gain by a war and everything to gain by a strike. In a strike, he may win the right to meet his employer on equal terms and freely to bargain with him as to wages, hours and working conditions. In which case he knows his employer will not find it expedient to say, "If you don't like your job, you may quit."

"The resistance of syndicalism is a new kind of revolt—more dangerous to capitalism than the demand for higher wages," says Walter Lippmann. And again: "You can not treat the syndicalists like cattle, because, forsooth, they have ceased to be cattle."

"We are not civilized enough," says Lippmann in another place, "to meet an issue before it becomes acute. We were not intelligent enough to free the slaves peacefully—we are not intelligent enough today to meet the industrial problem before it develops a crisis. That is the hard truth of the matter. And that is why no honest student of politics can plead that social movements should confine them-

## ELEMENTS OF A VAST PROBLEM 19

selves to argument and debate, abandoning the militancy of the strike, the insurrection, the strategy of social conflict."

The eight propositions already cited comprise the greatest problems with which industrial conciliation and arbitration has to do. They are not the only problems. In fact, there are scores of problems pertaining to particular industries about which the layman never hears. The boycott, the blacklist and the picket have been mentioned. These three problems are secondary but there remains a vast number of others, if not secondary, then tertiary, or still further removed from the arena of the conflict.

Since the industrial conflict involves deep-seated causes and since it has to do with every element of the social organization, every factor in social progress, we shall know very little about industrial conciliation and arbitration unless we view it in the light of the social and political institutions prevailing where experiments have been carried on. We must not forget that we are dealing with a problem having its roots deep in the past—deep in centuries of ignorance, political inequality, economic bondage. Nor should we be disappointed if we fail forthwith to develop a millennial solution of the problem since we are not so far removed from the ignorance and

inequality of past centuries. But this is the excuse, in each instance, for presenting a kaleidoscopic view of social and political life in the several countries.

This volume attempts to present in concise form a history of conciliation and arbitration in England, Germany, France, New Zealand, Australia, Canada and the United States, together with an analysis of the operation of the several schemes. No system so far devised has worked with any conspicuous degree of perfection. If conciliation and arbitration have not done what they were designed to do, the reasons ought to appear from the analysis of the several experiments. However imperfect the schemes may be, an effort has been made to deal sympathetically with them. Conciliation and arbitration by state agency may be regarded as a milestone of the greater movement, contributing in some measure to the ultimate solution of the problem and the realization of harmony in the industrial world.

Although conciliation and arbitration function to the same end, they are different processes. Conciliation is an informal method of settling industrial disputes or of preventing them. Conciliation may be carried on between the parties, or representatives of the parties, directly or through unofficial or state agencies. With the rise of trade unions, we have

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seen Labor, acting through its committees of the trade organization, barter with Capital directly in joint conference. We call this collective bargaining. We have also seen it join with Capital, without, however, any formal agreement to that effect, in accepting the good offices of third parties. Arbitration is a formal process. In those countries where the submission of matters in controversy is not compulsory, it generally follows a signed agreement in which both parties bind themselves to carry out the award. Formal hearings are held in which testimony is taken and a written award is made, informing each party what it is to do. Where arbitration is carried on under sanction of law, the award may be and generally is legally binding.

## CHAPTER II

### ENGLISH EXPERIMENTS

**I**NDUSTRIAL conciliation and arbitration, like many economic, social and political institutions now on trial in this country, has a European origin. It was an invention of the last century, but the germ of the idea is to be found in the rise of the industrial state. The beginnings of the industrial state are to be found in England, Germany and France, and date from the sixteenth century.

Since the operation of every device for conciliation and arbitration is intimately dependent upon basic political, social and industrial conditions, all of which, in turn, reflect the temper of working people and the masters of enterprise, it is necessary to examine the background of English society in connection with the study of particular devices for conciliation and arbitration.

When feudalism gave way to commercialism in England, the guild began to appear. The merchant guilds were associations of traders and within cer-

tain fixed jurisdiction they enjoyed a complete monopoly of manufacture and trade under special charters from the Crown. For instance, one guild held control of the trade of Oxford and suburbs and another of cloth-dyeing in Nottingham and ten leagues around.

Craft guilds or associations of artisans sprang up about the same time. Several English towns had weavers' guilds as early as 1130. They appeared as rivals of the merchant guilds and finally succeeded in breaking up the monopolies enjoyed by the merchant guilds. They were legalized by the Crown about the middle of the twelfth century.

In the beginning, the guilds were guardians of commercial morality, protecting the people against short weights and shoddy material. They performed social, educational and religious functions, acted as benefit, insurance and burial societies. Many of the guilds became wealthy, acquiring large sums of money, vast tracts of land, buildings and colleges. The guild lands, with the exception of those held by the London guilds, were confiscated during the reign of Edward VI.

Provisions for the settlement of individual disputes between master and workmen were common in English laws as far back as the middle of the sixteenth



century. Beginning with the Statute of Apprentices in 1562 and ending with a special act of Parliament in 1747, these laws simply referred all disputes between employer and employee to the local magistrate for adjudication. Reference of disputes was compulsory on the request of either party and decisions likewise were binding upon both parties and enforceable by proceedings of distress and sale or imprisonment.

The Statute of Apprentices, which grew out of monopolistic labor conditions fostered by the guilds, was designed as a legal restraint on wages. Among other things, it provided that no person should, under a penalty of forty shillings a month, use or occupy any art, mystery or manual occupation without a previous seven years' apprenticeship. The number of apprentices was limited to three to one journeyman, and for every additional apprentice after the third, another journeyman was required. The act probably would have favored traders and artisans by limiting the supply at the expense of non-apprenticed labor, except that the justices in Quarter Sessions were empowered to fix the rate of wages in husbandry and handicrafts. This act was one of the contributing causes to the widespread pauperism which followed. During the pe-

riod the statute was in force, the residuum of labor was driven into agriculture or into new industries where apprenticeship did not prevail.

England has had one notable experience in an effort to compel working men to labor when they are otherwise disposed. Because that experience is suggestive of the consequences of compulsory arbitration if attempted in this country, it is of interest here.

Wages rose enormously after the Black Plague of 1348 and Parliament passed the Statute of Laborers in 1351. This act sought to compel every man and woman under sixty years of age to serve the first employer who should demand his or her services and at the prevailing wage before the plague, or in 1347. Fines and imprisonment were provided as punishments for violations of the act. The statute also attempted to regulate prices. It was a miserable failure and accomplished none of the objects designed by its framers. Additional legislation increasing the severity of the statute was just as futile, just as foolhardy.

With the rise of the industrial state and especially the cotton industry in England, disputes between employer and employee multiplied. The old handloom weaver was in sore straits with the introduc-

tion of machinery in the cotton industry, and skilled artisans in the textile fabrics, thrown out of employment, suffered the severest penury. The workers looked upon the introduction of machinery with deep-seated hostility. Riots were frequent and machinery was destroyed by mobs of working men. Stocking and lace frames, installed at Nottingham, were broken up by the imperiled workmen, when a law of 1812, extending the scope of an act of 1727 that had applied to stocking frames, specifically made it a capital offense to destroy machinery. Lord Byron, in denouncing the act in Parliament, insisted that the jury to try the frame breakers should consist of twelve butchers and that a Judge Jeffreys should preside on the bench.

"We are accustomed to measure prosperity by the millions of dollars' worth of cheese and butter and machinery and leather put on the market," says John R. Commons. "Let us measure it by the thousands of men and women turned out and placed upon the labor market."

If we are to measure the prosperity, or lack of it, in English society during the first half of the nineteenth century, we must examine the impoverished condition of the English working people at that time. We must remember that England at the

beginning of the French Revolution was still agrarian in industry; that the government was still aristocratic, and that the spirit of individualism was the prevailing note of philosophical thought. But we must know also that a change had been taking place; that about half the population was urban in 1770. This proportion is in strong contrast with the vocational divisions in 1688 when it was estimated that eighty per cent. of the population was engaged in agriculture and only twenty per cent. in the trades and handicrafts; when seventy-eight per cent. of the annual income of the nation was from agriculture, but fourteen per cent. from the trades and only eight per cent. from the handicrafts.

More than a century, agriculture and trade had enjoyed liberal subsidies from the government while the interests of the working man had been wholly subordinated or totally disregarded. In fact, the laws against combination, emigration and mobility were aimed specifically to restrict the liberties of the working man. Doctor G. Von Schulze-Gaevernitz relates<sup>1</sup> that the system of state nursing became so prodigal that a regulation in behalf of the woollen trade required that no corpse was to be interred without a woollen shroud. At the same time the

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<sup>1</sup> *Social Peace*, p. 5.

anti-combination law of 1799 aimed at the "Institution of Halifax" had failed to accomplish its purpose because exemptions were recognized under the Statute of Apprentices, which, however, was suspended in 1802 and repealed in 1814.

The consolidation of small farms into great estates marked the decline of agriculture and forced the small landholder into the towns where the labor market was already overrun. Immigration during the first half of the last century from Ireland, where the standard of living was lower, further accentuated the distress of the English working people, tending to augment the number of unemployed and to reduce wages to the minimum level of subsistence.

We must remember that the development of steam for power shifted the seat of industry from the banks of rivers to the towns where labor was more plentiful and that the town population increased rapidly during the last years of the eighteenth and first years of the nineteenth century—at a much faster rate than the population of the whole country. Between 1801 and 1839 the population of the whole country increased about fifty per cent. while such cities as Liverpool, Manchester and Glasgow, during the period from 1801 to 1831, increased

from one hundred thirty-eight to one hundred sixty-one per cent.

The toilers were entirely unprotected from unsanitary workshops and accident from defective machinery. Disease was far more common among the working people than among other classes and there was no relief. Education was almost wholly neglected by the state, the workers being dependent therefor upon the philanthropy of the church.

A working day of twenty hours was not exceptional, and hours were practically unlimited between 1790 and 1820. Children, obtained in large gangs from the poor law guardians, worked in twelve-hour shifts. As late as 1860, evidence is cited in Karl Marx's *Capital* to show that in the lace trade, children of nine or ten years were "dragged from their squalid beds at two, three or four o'clock in the morning and compelled to work for a bare subsistence until ten, eleven or twelve at night, their limbs wearing away, their frames dwindling, their faces whitening and their humanity absolutely sinking into a stone-like torpor, utterly horrible to contemplate." The conditions under which pottery was made were especially bad and half the workers in the manufacture of matches were children under

thirteen and young persons under eighteen, according to Marx. Bakeries, cotton manufactories, blast furnaces, forges and plate rolling-mills exacted a terrible toll of human energy and sapped the vitality alike of men, women and children. According to Lord Ashley only twenty-three per cent. of the factory hands in 1839 were adult males. The remaining seventy-seven per cent. were women and children.

Naturally, there was very little social peace during the first years of the century, although the workers were little organized. Many "rebellions of the belly," waged by hungry hordes bearing banners of "Bread or Blood," were suppressed by the military authorities between 1810 and 1820.

With the founding of the Working Men's Association in 1836 in London, the avowed object of which was to obtain universal suffrage, chartism was born. An address sent out to working men demanded "an equality of political rights," in order that they might probe "social ills to their source," and "apply effective remedies to prevent, instead of unjust laws to punish." This so-called People's Charter attracted millions of working men who first undertook to gain their ends by peaceful means. When the Parliament rejected a petition, bearing a

million and a quarter signatures and praying for the adoption of universal suffrage, a general strike was called. The strike failed. Other petitions followed and were similarly rejected.

Upon the outbreak of the French Revolution of 1848, disturbances were renewed and for a year London was guarded from invasion of the workers by soldiers and special constables.

"The general public," says Doctor G. Von Schulze-Gaevernitz, "understood nothing of the movements going on amongst the working classes. As usual they attributed everything to the personal influence of a few demagogues. They took what comfort they could get from the idea that the people were being 'inflamed' and 'misled' without considering that a great and wide-spread revolutionary movement does not show itself without a cause, and never without some fault on the part of the powers against which it is directed."

We pause! We are almost startled by the accuracy with which Doctor Von Schulze-Gaevernitz' description of the general public in England sixty years ago fits the average American small proprietor with capitalistic inclinations when a strike to-day interferes with his business or the business of some industrial potentate whom he is trying to ape.

The agitation for shorter hours of labor began



about 1796 when a board of health appointed in Manchester brought in a startling report. During the year 1802, Sir Robert Peel introduced and had passed a bill applying only to pauper apprentices, which limited the hours of little children to twelve a day. There was a parliamentary inquiry into the subject of hours of labor in 1815, while an act of 1819 forbade the employment of children under nine and fixed the hours of children from nine to sixteen at seventy-two a week, exclusive of meals. Trade unions, having been given the right to incorporate in 1824, the agitation took on additional importance. Sir John Hobhouse obtained a Saturday half holiday in 1825.

But it was even more difficult to get the new laws enforced than to obtain their enactment. The local magistrates were notoriously under the influence of the employers, and justice was arbitrarily distorted to the prejudice of the working classes. A justice of the peace was wholly unfit to act as mediator between employer and employee, because he was always a party in interest.

From 1800 to 1824, Robert Owen, who later became famous on two continents, was working out his industrial reforms, first at Manchester and later at New Lanark, Scotland. At New Lanark, he ban-

ished the storekeepers, removed the taverns and gin-mills, and erected cozy dwellings for his employees.

Owen was one of the first men of the last century to demand a comprehensive scheme of legislation for the protection of the working men. He favored a limitation on the hours of labor in mills to twelve a day, including one and one-half hours for meals; the prohibition of the employment of children under ten in mills and then only six hours a day and insisted that children should not be admitted into mills after ten, unless able to read and write and understand the first four rules of arithmetic, and girls unless able to sew. Also, Owen demanded universal compulsory education.

The employment of persons under twenty-one in the cotton trade at night was forbidden in 1831. Two years later, due to the activity of Lord Ashley, the working hours of children under thirteen were limited to forty-eight a week. As a result of the investigation of the commission appointed in 1840, the mining act, forbidding the employment of children under ten underground, was passed. It was the first act to provide for government inspectors. The Fielding ten-hour bill became a law in 1847. By the extension act and workshop regulation act of 1867, the ten-hour day was made to apply

to other industries besides the manufacture of textiles. All the laws were consolidated in 1878.

In the midst of England's industrial revolution the English Parliament passed a series of four acts, in 1800, 1803, 1804 and 1813 applying to England, Scotland and Ireland, and designed to regulate the relations between master and workman.\* A notable departure from the earlier forms of this legislation was made. Substantially the acts provided for the appointment of two arbitrators, one by the employers and one by the employees, from nominations made by the local justice of the peace. These laws applied only to the cotton trade. Like the former acts they made reference of disputes compulsory and decisions binding.

The act of 1824, which consolidated the three acts then in force, extended the operation of the principle of conciliation and arbitration, as defined by law, to all trades. To insure the maintenance of the freedom of contract between employer and employee, first secured by the repeal of the Statute of Apprentices in 1814, mutual consent of master and workmen was made necessary as a condition precedent to the fixing by local magistrates of rate

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\* 39-40 Geo. III, Ch. 90; 43 Geo. III, Ch. 151; 44 Geo. III, Ch. 87; 53 Geo. III, Ch. 57.

of wages or price of labor or workmanship. This clause abolished the compulsory features of earlier legislation on the subject and is noteworthy only for this reason. The consolidation act of 1824 remained in force until 1896.

The repeal of the Statute of Apprentices was demanded by the employers and its avowed object was to cheapen labor. Every effort was being made to intensify the hatefulness of laws enacted up to 1800 against combinations of working men.

The act of 1824 was amended in 1837 to provide for compulsory arbitration between employers and workmen, upon the application of either party. The local magistrate was empowered to nominate four or six arbitrators, half workmen and half masters. In the event of the arbitrators' failure to agree, it was provided that the case should be referred to the appointing magistrate.

Subjects for arbitration included price for work done, hours of labor, injury or damage to work, delay in completing work or bad material. The act provided that in emergencies, the justice of the peace might grant a summary hearing. Mutual consent was a condition precedent to the fixing of future rates of wages and standards of workmanship.

The awards of the boards could be enforced by distress or imprisonment. This act was intended mainly for the textile industries.

The council of conciliation act, drawn from the French system, was passed in 1867. It made it possible for any number of employers and workmen to agree to create a council of conciliation and arbitration and receive a license from the government with all the powers of the boards under the act of 1824. Fixing wages was expressly forbidden. Disputes, before reaching the council, must have been referred first to the "committee on conciliation," consisting of one master and one workman. Although this act remained in force until 1896, it was never more than a dead letter, no application for license ever having been made under it.

The only definite answer offered in explanation of the failure of this act, according to Leonard W. Hatch, in referring to the later debates in Parliament, is that the act was too inelastic, laying down too many hard and fast rules as to the constitution and procedure of the councils, so that no latitude was left to employers and workmen who might desire to form them. The act provided for little more than conciliation committees for collective disputes. But this feature of the act is noteworthy for the

reason that it is the first instance of legal recognition in England of collective disputes and consequently of collective bargaining between employer and employee. Councils were empowered to take cognizance of disputes involving one or more workmen.

In 1872 Parliament passed the masters and workmen act. It provided that masters and workmen might contract as to terms of employment and bind both parties to submit their disputes to arbitration. It, however, offered no inducement to the parties to enter into contracts and permitted either party to withdraw from such contracts after a brief notice to the other party. Although penalties could be provided for under the contracts, no provision was made to enforce them. This act was in force until 1896, but no practical results ever came of it.

Private boards of conciliation were established in England as early as 1856, and private voluntary boards were common in England at the time of the passage of the council of conciliation act in 1867.

Trade boards of conciliation and arbitration, made up of an equal number each of employers and workmen were quite successful in averting trouble in the iron and steel industry in England. Joint committees of conciliation and arbitration similar

to the trade boards but with less machinery and jurisdiction in particular establishments also made notable progress toward friendly relations between employer and employee. District boards of conciliation and arbitration had general jurisdiction over a variety of employments.

The first permanent and successful board of conciliation was organized in 1860 in the hosiery and glass trade at Nottingham, England, by A. J. Mundella.

Modern conciliation and arbitration in England dates from the dock laborers' strike in 1889. The movement for industrial peace following that strike was begun by Sir Samuel Boulton.

Under the direction of the London Chamber of Commerce, two panels of twelve members each were selected, one from the Chamber of Commerce and one from the trade unions. Every dispute brought before the Chamber of Commerce was referred to a special committee of one, two or more members from each panel. The third person, known variously as referee, umpire or chairman, was eliminated in this plan. The operations of the Chamber of Commerce were confined, of course, to the city of London.

An act of Parliament of August 7, 1896, pro-

vided for the registration with the English board of trade, corresponding to our Department of Commerce, of all boards organized for the purpose "of settling disputes between masters and workmen." Registration was optional, but as long as a board or association was registered, the act required it to "furnish such returns of its proceedings, and other documents as the board of trade may reasonably require." The government board of trade was authorized to adopt rules of procedure for registered arbitration and conciliation boards.

By this act the government board of trade was authorized to inquire into anticipated or existing differences between employers and workmen; to take steps to bring the parties together under the presidency of a chairman mutually agreed upon or nominated by the board of trade, with a view to amicable settlement; on application of employer or workmen, "after taking into consideration the existence and adequacy of means available for conciliation in the district or trade," to appoint a "person or persons to act as conciliator or as a board of conciliators."

In the event of settlement by conciliation or arbitration, the terms were to be drawn up in a memorandum and a copy delivered to and filed by the



board of trade. The board of trade was authorized to encourage the formation of boards of conciliation in districts and trades not already provided.

In 1911, following the railway strike, an industrial council was created at the instance of the president of the board of trade. This council was established for the purpose of considering and of inquiring into matters referred to it affecting trade disputes, and especially of taking suitable action in regard to any dispute referred to it affecting the principal trades of the country, or likely to cause disagreements involving the ancillary trades, or which the parties before or after breaking out of a dispute were themselves unable to settle.

The object of the government in this matter<sup>3</sup> was to encourage and foster voluntary methods or agreements, rather than to interfere with them. The industrial council has no compulsory powers.

At the initial meeting of the council it was unanimously agreed that, excepting in very special cases, which would be considered on their merits in each instance, the meetings of the council should be private and confidential. It was decided that matters should be treated by the council as if it were act-

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<sup>3</sup> *Ninth Report of the Board of Trade of Proceedings under the Conciliation Act, 1896*, p. 114.

ing in a judicial capacity and not as advocates. The activity of the board is indicated somewhat from a letter addressed by the president of the board of trade to the council on June 14, 1912, in which the council is asked to determine the best method of securing the fulfilment of industrial agreements and how far, and in what manner, industrial agreements made between representative bodies of employers and of workmen should be enforced throughout a particular trade or district.

The industrial council consists of thirteen representatives of employers and a corresponding number of representatives of work people with power to add to their number.

The board of trade has been conspicuously successful in the settlement of industrial disputes. In 1905, it intervened in fourteen disputes and settled all of them; in 1906, it intervened in twenty instances and settled sixteen; in 1907, there was a settlement of thirty-two out of thirty-nine interventions; in 1908, the board was equally successful.

Since 1908, three panels of fifteen members each have been nominated by the president of the board of trade, one of employers, one of employees and one of neither, the last being persons of eminence and impartiality, and designated for chairmen. Indus-

trial courts, so called, are nominated from the three panels by the board of trade.

In 1909, six disputes involving stoppage of work were settled by conciliation or mediation and seventeen disputes involving stoppage of work were settled by arbitration under the conciliation act of 1896. In the same year fifteen disputes involving stoppage of work were settled by the conciliation or mediation of trade boards, and six disputes were settled by arbitration of trade boards. Four disputes involving stoppage of work were settled by conciliation of district boards, trade councils and federations. Ten disputes involving stoppage of work were settled by conciliation and twenty-eight disputes involving stoppage of work were settled by arbitration by individuals. Six hundred ninety-eight disputes were settled by conciliation and three hundred twenty-seven disputes by arbitration of permanent conciliation and arbitration boards, including district and general boards, in 1909.

In 1910 six disputes involving stoppage of work were settled by conciliation and nine disputes involving stoppage of work were settled by arbitration under the conciliation act of 1896. Fourteen disputes were settled by particular trade boards, two disputes by district boards, trade councils and feder-

ations and twenty-eight disputes by individuals. Eight cases were settled before the Industrial Courts created in 1908. In the same year, 1910, one thousand eighty-seven disputes were settled by permanent conciliation and arbitration boards, including trade and district boards. In 1910 there were two hundred eighty-two conciliation boards in Great Britain, of which two hundred sixty-five were for particular trades and seventeen were district or general boards. Ninety-six trade agreements, in which it was provided that failure of the respective boards of conciliation to reach an agreement should be followed by a request of the board of trade that it appoint an arbitrator, were reported in force.

In 1912, twenty-two disputes were settled under the conciliation act of 1896, thirteen by particular trade boards, twelve by district and general boards and trade councils and fifty-two by voluntary conciliation and by individuals. In the same year, two thousand, one hundred thirty-eight disputes were settled by permanent conciliation and arbitration boards and standing joint committees.\* Seventy-three disputes were dealt with by the board of trade or its agents under the act of 1896 in 1912, this

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\* Between 1901 and 1910, 7,784 cases out of 16,561 considered by these boards were settled.

number being less than in 1911, when ninety-two cases were dealt with, but higher than any previous year with the exception of 1911.

These seventy-three cases do not include adjustments made under the revised railway conciliation scheme recommended by the Royal Commission appointed in 1911, as amended by the railway conference agreement of December, 1911. This scheme provided for the establishment on each railway of a suitable number of conciliation boards to deal with questions referred to them relating to the rate of wages, hours of labor or conditions of service, other than matters of management of discipline, of all wage-earning employees engaged in the manipulation of traffic and in the permanent service of the company. For each railway conciliation board there is a chairman, the same chairman acting for all the conciliation boards on a company system. The chairman is to be selected by the parties, or, failing agreement, he is appointed by the board of trade.<sup>5</sup>

The table at the bottom of page 45 shows the proportion of work people and employers involved in industrial controversies between 1903 and 1912,

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<sup>5</sup> *Tenth Report of Proceedings under the Conciliation Act of 1896*, p. 4.

and in whose favor the disputes were decided. The proportion of work people directly involved in disputes which were settled in favor of the work people between 1903 and 1912 was an average of twenty-seven and one-half per cent., while the average proportion of work people directly involved in disputes settled in favor of the employers during the same period was twenty-six and one-tenth per cent.

After 1907 and until the changes of 1911, English railway companies and employees settled their differences by arbitration and conciliation under an agreement secured by the board of trade and

TABLE NO. 1  
SHOWING PER CENT. OF DISPUTES SETTLED IN FAVOR OF EACH  
PARTY AND COMPROMISES, 1903-1912\*

Year	Proportion of Work People Directly Involved in Disputes Which Were			
	Settled in Favor of Work People	Settled in Favor of Employers	Compromised or Partially Successful	Indefinite or Unsettled
	Per cent.	Per cent.	Per cent.	Per cent.
1903 .....	31.2	48.1	20.7	0.0
1904 .....	27.3	41.7	30.9	0.1
1905 .....	24.7	34.0	41.2	0.1
1906 .....	42.5	24.5	33.0	0.0
1907 .....	32.7	27.3	40.0	0.0
1908 .....	8.7	25.7	65.6	0.0
1909 .....	11.2	22.3	66.5	0.0
1910 .....	16.3	13.8	69.7	0.2
1911 .....	6.6	9.3	84.1	0.0
1912 .....	74.5	14.3	11.1	0.1

\* *Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in the United Kingdom in 1912*, p. xix, Introduction.

representatives of the trade unions.<sup>6</sup> The original signing of the agreement followed a threatened railway strike. Under the first agreement, there was a central conciliation board for a whole railway system made up of representatives from the sectional boards, but these central boards were abolished after the inquiry of the Royal Commission in 1911. One hundred seventy-one cases out of two hundred sixty-five handled by thirty boards were settled in 1909. Seventy-two cases out of ninety-seven handled by fourteen boards were settled in 1910.<sup>7</sup>

The inquiry of the Royal Commission of 1911 followed a threatened strike, the men having been greatly dissatisfied with the results of the original agreement of 1907. It was charged that the machinery of the agreement had been used against them as a means of delay; that this machinery was too slow and cumbersome; and that it had proved far too expensive to the trade unions.

The recommendations of the Royal Commission were on the point of being repudiated by the employees when, through the intercession of the House of Commons, the agreement of 1907 as amended by the report of the Royal Commission was further

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<sup>6</sup> *Bulletin of the Bureau of Labor*, No. 98, Vol. 24, p. 82.

<sup>7</sup> *Ibid.*, p. 83.

amended in joint conference. This present agreement requires the employers to receive a deputation of men, if they wish to send one, within fourteen days after the receipt of a petition, which must be signed by twenty-five per cent. of the employees, unless a different number is agreed upon by a sectional conciliation board. Adverse changes in wages, hours or conditions are not effective until endorsed by a conciliation board.

Lately, the trade unions have shown hostility to the scheme of the Royal Commission as amended by the railway conference agreement, because only active railwaymen may become members of the conciliation boards. The trade unions, which have a membership of about three million, demand the admission of the trade union officials on the conciliation boards since, as they contend, the active members are subjected to victimization when they run counter to the railway companies. Under a recent referendum, 124,415 of the 260,000 members of the Railwaymen's Federation voted in favor of the total abolition of the conciliation boards.

The rise in prices, estimated at six per cent. from 1900 to 1908, coinciding with the decline of wages, was mainly responsible for the unrest in 1910 and 1911, when numerous strikes occurred, affecting



railroads, shipyards, factories and mines. Other causes were increased unemployment, increased pauperism and a speeding-up process in industry. The English working man pays about two per cent. more than the French workman for rent and about twenty-three per cent. less than the German workman. But his food and fuel cost about eighteen per cent. more than the food and fuel of either the German or French workman. Wages of French workmen are, however, a fourth less than those of the English workmen and hours per week are seventeen per cent. greater. Hourly rates of wages in French industries are hardly two-thirds of the English rate for the same industries.

The table on page 49 shows the principal causes of disputes for ten years, 1903-1912, and the number of work people directly involved in the disputes. With two exceptions, 1909 and 1910, wages were the predominating cause of the disputes. In 1909 the leading cause was hours of labor and in 1910 the leading cause was the employment of particular persons or classes of persons. Generally speaking, trade unionism has been the second among the leading causes of industrial controversies. In 1911, almost as many people were involved in disputes over trade unionism as over wages.

TABLE NO. 2  
CAUSES OF DISPUTES\*

Principal Cause	Number of Work People Directly Involved in Disputes Beginning in				
	1908	1904	1905	1906	1907
Wages:					
For increase, for minimum wage, against decrease, etc. ....	49,557	32,783	38,737	87,933	56,058
Hours of labor:					
For decrease, etc...	4,108	1,970	3,145	7,086	2,080
Employment of particular classes or persons .....	7,822	6,081	6,408	4,734	13,699
Working arrangements, etc.....	13,609	7,601	5,546	6,536	11,802
Trade unionism .....	17,602	7,925	9,377	50,750	16,439
Other causes .....	817	20	4,440	833	650
Grand total .....	93,515	56,380	67,653	157,872	100,728

Principal Cause	Number of Work People Directly Involved in Disputes Beginning in				
	1908	1909	1910	1911	1912
Wages:					
For increase, for minimum wage, against decrease, etc. ....	175,889	42,028	76,474	383,215	1,020,420
Hours of labor:					
For decrease, etc...	8,377	87,367	91,927	13,161	8,961
Employment of particular classes or persons .....	11,078	13,492	114,793	32,639	34,985
Working arrangements, etc.....	12,467	8,892	62,207	68,009	42,068
Trade unionism .....	12,218	12,935	32,777	327,588	120,924
Other causes .....	3,940	5,544	6,907	6,492	5,658
Grand total .....	223,969	170,258	385,085	831,104	1,233,016

\* Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in the United Kingdom in 1912, p. xv, Introduction.

With the return of Tom Mann from Australia in 1910 and the visit of William D. Haywood to England, that country saw industrial unionism, as proclaimed by the Industrial Workers of the World, get a foothold there for the first time. There are some points of similarity between the old Chartist movement and the I. W. W., since both espouse direct action.

It is to be noted that 1911, especially, was a year of severe strikes in Great Britain. The Welsh miners' strike which had begun in October, 1910, continued through the greater part of 1911. It involved twelve thousand five hundred men. The Lancashire cotton weavers and spinners' strike, involving over three hundred thousand operatives, was settled through the intervention of Sir George Askwith. The international strike of the seamen, involving six hundred thousand men, eighteen countries and three hundred harbors in Europe and America, was disastrous to English shipping. The railway strikes in England and Ireland added to the industrial disturbances.

The table on page 51 shows the number of industrial disputes in Great Britain, the working men involved and the time lost for each year from 1903 to 1912. There were more disputes in 1911 than

any other year in the period, a slight decrease being shown in 1912. The increased number of working men involved in 1912 is significant, being nearly five times the number involved in 1908. The num-

TABLE NO. 3

SHOWING NUMBER OF DISPUTES, WORKING MEN INVOLVED AND TIME LOST THROUGH INDUSTRIAL DISPUTES\*

Year	No. of Disputes Beginning in Each Year	No. of Work People Involved in Disputes Beginning in Each Year			Aggregate Duration in Working Days of All Disputes in Progress in Each Year
		Directly	Indirectly	Total	
1903.....	387	93,515	23,386	116,901	1,443,781
1904.....	355	56,380	30,828	87,208	1,316,686
1905.....	358	67,653	25,850	93,503	2,295,973
1906.....	486	157,872	59,901	217,773	2,570,950
1907.....	601	100,728	46,770	147,498	1,878,679
1908.....	399	223,969	71,538	295,507	10,632,638
1909.....	436	170,258	130,561	300,819	2,560,425
1910.....	531	385,085	130,080	515,165	9,545,531
1911.....	903	831,104	130,876	961,980	7,620,367
1912.....	857	1,233,016	230,265	1,463,281	38,142,101

\* *Report on Strikes and Lockouts and on Conciliation and Arbitration Boards in the United Kingdom in 1912*, p. ix, Introduction.

ber of working days lost increased alarmingly, amounting to the work of more than one hundred twenty-five thousand men working every work day in the year. In 1911, nearly one-half of the total number of work people affected by strikes and lockouts (448,618) were transport workers, the next highest in number (221,433) being textile workers

and 140,808 having been employed in mining and quarrying.

While Thorold Rogers' estimate of the character of English working men seems to have been a bit exaggerated in 1884 when his book, *Work and Wages*, was published, yet the estimate in the main was true and is true to-day.

"The remarkable fact in the history and sentiments of the English workman is that he is neither socialist nor anarchist," said Rogers. "He believes, and rightly believes, that in the distribution of the reward of labour his share is less than it might be, than it ought to be, and that some means should be discovered by which the unequal balance should be rectified. He does not indeed detect the process by which this advantage can be secured to him, and relies, though doubtfully, upon certain expedients by which he thinks he can extort better terms. He has good reason for believing that he can gain his ends, in some degree at least, by association with his fellows; for he can not have forgotten how angrily any action of his in this direction has for centuries been resented and punished, and how even now it is assailed by sophistical and interested criticism. But he has never dreamed of making war on capital or capitalist. In his most combative temper he has simply desired to come to terms with capital, and to gain a benefit by the harmonious working of a binding treaty between himself and his employer. He is wise in his contention, though not always wise in his strategy."

The estimate of Doctor Von Schulze-Gaevernitz is equally interesting and somewhat more enlightening. It supports the main contention of Thorold Rogers that the English workman is not to be carried away by gusts of passion, however great his wrongs may be.

"Amongst the English working classes," says Doctor Von Schulze-Gaevernitz, "the economic investigator never meets that deep-seated mistrust which makes the German workman regard every man in a good coat as an enemy, if not a spy. . . . The goal of the English Labor movement is still far off, its struggles are often hard and prolonged; but the efforts made to reach that goal are along the lines of the existing organization of society. . . . Behind the growth in the outer forms of the social life lies an inner movement, which supports it and gives it unity, viz., the vast revolution in thought which carried men from an individualistic political economy and a utilitarian philosophy to an organic view of society and of the place and duties of the individual."

No country has done more than Great Britain within the last decade to relieve the distress of wage earners and to lift work people to a plane of greater economic independence. No legislative body has met critical, social and industrial problems since 1905 more courageously than the English Parlia-

ment. In fact, Great Britain has just passed through a revolution of greater consequences to her work people, of more direct relation to their personal welfare, than any other in the history of Anglo-Saxon civilization. The fruit of this revolution is a number of industrial measures for which the Australian colonies and New Zealand furnished the inspiration. It is a historical instance going to show that the parent may gather wisdom, practical wisdom, at the feet of the child. The beginning of this legislation was the enactment of the workmen's compensation act in 1897, followed by the unemployed workmen's act of 1905.

In 1908, Lloyd-George carried the passage of his old age pension act, strongly supported by organized labor. This act was effective January 1, 1909. Originally, the act provided pensions for persons seventy years of age, citizens of the United Kingdom, who had lived in the country at least twenty years preceding and who did not belong to the delinquent, defective or criminal classes and who were not public dependents. This latter disqualification was removed in 1911 so that persons receiving poor relief were transferred to the old age pension fund. The largest pension provided under the act is five shillings a week to all persons who have

an income of not more than twenty-one pounds a year. Graduated pensions are paid to persons having larger incomes. In 1912, there were one million pensioners and the annual cost to the government of maintaining the system was sixty million dollars.

Unemployment caused great distress during 1908, the number out of work being variously estimated at from one million to two and one-quarter millions. The government extended whatever relief it could under the act of 1905 but a report made late in 1909 showed that work done under the public relief act would have cost thirty per cent. less if done by ordinary labor. This report urged the creation of labor exchanges, which suggestions were carried out in 1910, when eighty-two labor exchanges were opened in Great Britain. Work was found for three hundred twenty-five thousand persons during the first nine months of 1911. In 1912, the number of exchanges had grown to two hundred fifty.

In the government insurance scheme instituted in 1911 and effective July 1st, 1912, provision was made for insurance against sickness, unemployment for nearly two and one-half million men in the building and engineering trades, and maternity grants to women. Unemployment insurance is ad-



ministered by the board of trade, the employer and employee contributing practically equal amounts to the fund and the government contributing one-third of this amount.

All wage earners whose annual earnings are less than eight hundred dollars a year and who are under sixty-five years of age, except soldiers and sailors otherwise provided for, pensioners, government employees, persons working on their own account, wives working for their husbands and casual domestics and workers, are entitled to share in the sick insurance provided by the act of 1911. Fourteen out of the nineteen million wage-earning population are insured under the act. The government contributes to a fund assessed against both employers and employees.

Great Britain passed the first minimum wage act in 1909. It provided for trade boards after the plan of Australian legislation and applied to the tailoring, lace-making, box and chain-making industries. The board of trade was authorized to select a chairman and secretary and to appoint not more than one-half of the members of each special trade board. If women were employed, it was necessary to include a woman on the trade board. The specific duty of these wage boards was to fix a wage

for time and piece work in each industry. The English coal strike of 1912 resulted in the passage of a minimum wage law applying to coal miners. The act provided for district boards to determine rates of wages in different parts of the country. Immediately after the passage of this act the striking miners returned to work.

It is safe to say that if this body of legislation will, as may be expected when its benefits are fully developed, contribute materially to the avoidance of strikes and lockouts in Great Britain, the example is bound to have its effect in the United States, where temporizing processes are the prevailing order of statesmanship and where an institution may be successfully assailed by calling it "Socialistic."

## CHAPTER III

### GERMAN SOCIAL JUSTICE

**B**EFORE the passage of the act of July 29, 1890, regulating the industrial courts, industrial conciliation and arbitration in Germany was confined almost altogether to the settlement of individual disputes.

The industrial courts, originally, were similar to the French *Conseils des Prud'hommes*, and designed only for individual disputes. They were established in the Rhine province, formerly under control of France, in the early part of the nineteenth century. Three German states, Prussia, Saxony and Saxe-Weimar, had such tribunals prior to the enactment of the industrial code of 1869. That code empowered local authorities to create tribunals for the settlement of disputes between employers and the working people. Equal representation of employers and employees was required by the code. Not until 1890 was industrial conciliation and arbitration placed upon an imperial basis.

Industrial Germany presents such diversified economic and political phenomena as to make a brief and, at the same time, accurate analysis of industrial conditions there next to impossible. This is true because of the questionable unity of spirit in social and political thought. Yet, no study of conciliation and arbitration in Germany would be complete without considerable attention to the paternalistic character of the German state and an accurate understanding of laws designed to protect the workman against such unforeseen misfortunes as unemployment, pauperism and disease.

Germany, as a whole, is notoriously undemocratic, but almost every shade of political opinion may be found. In certain sections of the country political thought harkens back to medievalism, when the feudal state was all-powerful. On the other hand, there is the influence of the Social-Democrats, a growing factor of radicalism and a source of disturbance to the ultraconservative industrialism.

The present German Empire dates from the close of the Franco-Prussian War, 1871, and it is with the political and industrial tendencies, beginning with the present empire, largely, that this chapter has to deal.

German conservatives still cling tenaciously to the

individualistic view of property. They are very much afraid of popular government and resist its encroachments with every means in their power. In 1909 they forced the resignation of Bülow because he had espoused a small inheritance tax. They objected, not so much to the tax, as to establishing a precedent by which the popularly-chosen Reichstag would acquire control over property rights. Revenue for running the government, however, is derived largely from a graduated income tax. The rate is very low on small incomes and in Prussia there is an exemption of two hundred fourteen dollars. Some three hundred German cities have instituted an "unearned-increment" tax on land, a tax based on the theory that the state is entitled to a share of new value added to land from increase in population.

Urban population in Germany has far outstripped in growth the population of the country districts. When the empire was established in 1871, the city population was only twenty-three and seven-tenths per cent. of the whole, whereas it had grown in 1900 to forty-two and twenty-six-hundredths per cent. This shifting of the population has had a deplorable effect on the working people. It has increased land values enormously in the industrial

centers, greatly augmented rents and made increasingly difficult the problem of housing for the poorer people. The English Board of Trade in an inquiry made in 1909 found that if English rents are represented by one hundred per cent., German rents are one hundred twenty-three per cent. and French rents ninety-eight per cent. Of late years the strictly industrial provinces have gained notably at the expense of those strictly agricultural, a condition however not peculiar to Germany. The growth in population of the German cities illustrates the movement of the German people. In 1871, eight cities in Germany had a population of over one hundred thousand. In 1905, there were forty-one cities in this class. Eleven of these forty-one had a population of two hundred fifty thousand or more, and five a population of more than a half million.

In 1908, there were about four and one-half million male work people, including adults, juveniles and children, and somewhat more than a million female work people, a total of five and one-half million. Of the total number engaged in industry, over nine hundred thousand were employed in mining, smelting and salt works, over five hundred thousand in metal working and nearly eight hundred thousand in machine industries. The textile

workers numbered about eight hundred thirty thousand. Thus, over three million work people or about three-fifths of the total are engaged in industries which, in the United States, are the source of most of our industrial disturbances—the origin of a majority of our strikes and lockouts. All of these industries have increased their production by leaps and bounds since the present empire was established.

Industrial development since 1860 is revealed in the volume of trade for two years, 1860 and 1907. In the former year the imports and exports amounted to about seven hundred million dollars, and in the latter year to more than six times that amount. Imports of raw material for manufacturing purposes almost doubled during the ten-year period from 1895 to 1905. Each year the volume of manufactured goods imported is decreasing and the volume of manufactured goods exported is increasing.

In industry, Germany has been regarded as an imitator of England, from whom she received much of her earliest machinery and methods. But as W. H. Dawson says,<sup>1</sup> "While the average Englishman has been accustomed to regard commerce as a purely rule-of-thumb matter, the German has followed it

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<sup>1</sup> *The Evolution of Modern Germany*, p. 79.

as a science and an art, and in reality all the methods and measures which he has adopted in competing with his older rivals for the trade of the world may be reduced to one principle, characteristic of the Germans in so many ways, the application of a trained intelligence to the practical affairs of life."

Much of her industrial progress, Germany owes to a splendid and elaborate system of training schools for her own workmen—a system supplementary to trade apprenticeship, which has never been abandoned, but for which shop work in the trade schools may now be substituted. Continuation schools have influenced German workmanship since the sixteenth century but in the early nineties these schools were made compulsory for boys under eighteen, not students elsewhere. Only a few cities have not adopted the compulsory school system and it has become popular with all classes of people. Some continuation schools are maintained jointly by large manufacturing establishments, unions, the state and the city. Certain voluntary continuation schools require the payment of a small fee. Daytime, Sunday and evening classes are conducted in these schools. Workshop schools are maintained privately and by the state for about two hundred fifty trades. Also certain cities maintain training schools for teachers.



Girls, as a rule, are not required to attend compulsory continuation schools. In the grade schools, girls are taught cooking, sewing, marketing, etc.

Education in the grade schools is compulsory for both sexes from six to fourteen. School children are under the constant care of a school physician and a carefully planned course of out and indoor exercise is given. Books and breakfast are furnished by the school. The school system of Germany is not an expensive institution when compared with the educational systems of other countries. This is due in part to the abnormally low salaries paid teachers. These salaries vary from eight hundred dollars to one thousand five hundred dollars paid annually in the technical schools to teachers with university training and long experience. All in all, the German school system is a wonderful institution and to it, more than anything else, is due the rapid industrial advance of the country since 1871.

Government is a personal matter in Germany and the state shows particular concern for the welfare of the worker, whose hand and mind are trained by the state for specific vocations and who is protected by the state against accidents, sickness, old age and unemployment. University officials and college professors are devoting their lives to the

problems which arise in connection with the working man's welfare and happiness. The problems of unemployment, poverty and housing are attacked with the same weapons which the engineer uses in building railroads, the industrial magnate uses in increasing the output of his factory or his foreign market or the professional man employs in an analysis of the intricate problems with which he is daily confronted.

Municipal labor registries find work for nearly a million men and women every year. Some of these registries are maintained by the public and others by private agencies. Some are provided with buffets where food and beer are inexpensive and where cobblers and tailors perform their services for inconsiderable pay. Shower baths, a free dispensary and medical inspection are furnished. The wandering worker is looked after with unequalled interest and lodging-houses exist by the hundreds where a bed may be had for a trifle, or for work. Wandering workers are not looked upon as vagrants in Germany and as a consequence vagrancy has practically disappeared. This may seem strange to Americans who remember, during the winter of 1913, that thousands of men and women appealed to city officials all over the country, not for charity,

but for work, and were denied work because none was to be had. During the winter of 1914, however, several municipalities did attempt to provide public work for a comparatively small per cent. of the unemployed.

Germany has elaborate schemes of social insurance against sickness, accident and old age. Sick insurance is provided for those working in factories and mines, workshops, quarries, transportation industries and public enterprises. Free medical attention is included in the insurance benefits. Both the employer and the worker contribute to the insurance fund. Accident insurance is another feature of German industrialism, and must be provided by the employer. The system is administered somewhat after the plan of sick insurance. Old age insurance is available to certain workers whose earnings are five hundred dollars a year or less. Employers and employees contribute equally to the fund and to this the state also adds. In 1903, eighteen million were insured against accident and more than thirteen million persons against old age. In that year, the total expenditures from the various funds amounted to \$100,000,000 and the accumulated reserve to \$350,000,000. In 1909, the total revenues from the three systems amounted to \$210,-

000,000, of which \$165,000,000 was paid out in pensions and indemnities. The invested funds in 1908 amounted to \$496,000,000. It is estimated that the contributions amount to six and seventy-five-hundredths per cent. of the wages received by the insured, of which the employers pay three and sixty-eight-hundredths and the employees three and seven-hundredths per cent.

The predictions made when the industrial insurance laws were first enacted that they would embarrass and retard industrial development have not been realized. On the contrary, the period from 1884, when the sick insurance law first was passed, to the present time, by all odds marks the high tide of industrial development in Germany.

In 1907, there were nearly three thousand municipal and provincial savings banks with six thousand six hundred branches and deposits amounting to more than three billion dollars. Twenty-eight out of every one hundred of the population held an account in one of the savings banks.

But Germany's paternalistic care of its citizens does not stop with industrial insurance. The railroads are almost wholly a state institution. The Prussian system is the largest employer of labor in the world and the efficiency of its management

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is universally recognized. It has performed splendid service and is altogether popular.

Prussia is a large owner, also, of coal, potash, iron and salt mines. Ten million tons of coal are taken from the state mines every year. Forest and farming lands of nearly a million acres, formerly owned by the Crown, now furnish a considerable revenue to the state. The post-office had an admirable parcel-post system long before the parcel post was attempted in this country. Packages weighing from eleven to one hundred twelve pounds are carried at a very low cost. Telegraphs and telephones are monopolized by the post-office department and the rate per message is not quite half the charge in this country. Postal savings banks are operated in connection with the post-offices.

German manufacturers have a marked advantage in a less pretentious standard of living among all classes and consequently lower wages. There is a spirit of frugality which pervades all classes of society, unknown either in England or America. The element of price has given the German exporter an important advantage in world markets.

A species of social welfare is carried on by the larger German employers. The same hard condi-

tions attach as in this country—a spirit of philanthropy and condescension on the part of the employer and a necessarily patronizing and dependent spirit on the part of the employees. Social welfare work, as conducted in Germany as well as everywhere else, is not really popular with the working class because the workers must sacrifice their most cherished possession—self-respect—to benefit by it. Factory dwellings are one form of privately-maintained social welfare in Germany, but the worker is reluctant to accept them either as works of benevolence or disinterest because the selfish purpose of the employer to hold his men has been proved too often. Profit sharing has not gained much headway in Germany.

Notwithstanding everything the German state has done for its workers, the worker is still regarded as an underling. The paternalistic attitude of the government is not inspired by any spirit of democracy. Germany will not be able to throw off the shackle of industrial bondage until a fuller measure of political equality is obtained. No better examples of political inequality are to be found among Teutonic people than the class system of Prussian elections and the Prussian anti-coalition laws, or

any better evidence of thirteenth century political thought than the origin of the Prussian constitution, which was handed down by the Crown.

The great industrial leaders of Germany entertain practically the same ideas about labor organizations and the same attitude toward trade unions as great captains of industry in this country. Many of them, willing to bestow all kinds of contrivances for the welfare of their employees, are equally unwilling to deal with their employees through committees as to hours, wages and working conditions. It is the independence of the worker—his right to barter collectively, his right to act in society as an independent economic unit—which the industrial potentate of Germany, as well as of this country, most vehemently denies and vigorously resists. One great German industrialist, head of the coal and steel syndicates, asserted on one occasion that he would "refuse to negotiate with any organization whatever" and that he regretted that the state "interferes at all in labor relationships."

Employees of the state railroads are not permitted to organize labor unions and are wholly at the mercy of the state officialdom. The sharp outlines which separate the classes socially together with the bureaucratic character of the government operate as a

depressing element upon the rank and file of state employees.

Trade unionism in Germany is on the increase. The greatest growth has been in the Socialist unions, which had over one and three-quarters million members in 1906. Other unions had a membership of five hundred twelve thousand that year, bringing the total up to 2,215,154.

While the German industrialists have persisted in their obstinate opposition to trade unionism, they nevertheless have left nothing undone to bind themselves together in great and powerful unions with enormous resources at their command. They take the position that "modern economic development has brought to the front the estate of the industrialists, who have superseded the old feudal land proprietors as employers," and in a slightly different form they seek to maintain the feudal relationship between the master and the servant. They make free use of the blacklist and the lockout. Between 1899 and 1906, the number of lockouts annually in Germany rose steadily from twenty-eight to three hundred five.

Hours of labor in Germany are longer than in the United States. A very few industries have the eight-hour day, but ten hours is the rule and in some industries it is much more than that. Twelve hours



a day was the rule as far back as 1869, when the modern movement for reduced hours began. In 1877, the Socialists inaugurated their demand for a ten-hour day. In 1891 they demanded nine hours and in 1896 their present eight-hour day program was proclaimed. In 1908, an amendment to the industrial code fixed the hours for female workers at sixty a week but this rule is subject to many exceptions. An investigation made in 1902 showed that eleven per cent. of the female factory operatives worked nine hours or less and that forty-three per cent. worked from nine to ten hours. Sunday rest is still far from universal.

Advantages which German manufacturers have enjoyed in respect to wages and hours are passing. The cost of living is rising and the strength of trade unionism is growing. As the strength of trade unionism is augmented, its power to compel wage increases will also grow and cost of production in manufacturing will likewise expand. Present relations between Labor and Capital are extremely bitter. Both sides are fortified for a heroic struggle and the fight promises to be long and wasting on the contestants.

The industrial code declares that "all prohibitions

and penal regulations against industrial employers, industrial assistants, journeymen and factory operatives regarding agreements and combinations for the purpose of obtaining more favorable conditions of wages and of work, particularly by means of the suspension of work or the dismissal of work people, are repealed," but it does not apply to state employees, agricultural laborers or domestic servants. Otherwise it constitutes a legalizing act for strikes, but interpretations of the courts have been quite unfavorable to strikers in several instances.

An act of 1890, regulating industrial courts, was the first legislation recognizing the principle of collective disputes and providing for collective bargaining.

These courts were empowered to act as conciliation bureaus in disputes concerning the "terms of continuation or renewal of the labor contract," but only on condition that both parties requested action, and, if they numbered more than three, appointed delegates to the hearing. Conciliation bureaus consisted of the president of the court and at least four members, two employees and two workmen, but there might be added, and it was compulsory when the delegates so requested, representatives in equal

number of employers and employees. Representatives and members of the bureau could not act if concerned in the dispute.

The bureau could hear and examine witnesses under the act but could not compel their attendance. After hearing, each side was required to formulate its opinions of the allegations of the other side, whereupon an effort at conciliation was to be made. Failing in this, a decision followed and the delegates were required to declare within a specified time their acceptance or rejection of the award. At the expiration of this time the decision was published. In some cases, the president of these courts intervened informally with conspicuous success, but in three years, 1899, 1900 and 1901, there were nearly four thousand strikes, one hundred thirty-two only having been settled by the industrial courts.

The German law of 1890 was quite successful in the settlement of individual disputes but not successful in the settlement of collective disputes. The act of 1901 took the appointment of arbitrators out of the hands of the president and lodged it with the parties concerned in a controversy. Not only regular assessors of the court may be chosen but any other persons in whom the parties have confi-

dence. The new act made the appearance of parties to a dispute compulsory in the event one or both parties call upon the court to act as a board of arbitration.

When both parties ask for arbitration, the court is constituted as a formal board of arbitration. If only one side applies, it is the president's duty to attempt to obtain the cooperation of the other party. If successful, the board is constituted for the purpose of conciliation. If neither party applies for arbitration, it is the president's duty to urge the arbitration of the controversy. This provision permits the court to intervene with a view to settling threatened strikes and lockouts. There is nothing novel in the proceedings before an industrial court sitting as a board of arbitration. Failure to appear before the court in answer to a summons of the president is punishable by a fine. Decisions are given by a majority but the president may abstain from voting if there is a tie. The acceptance of the decision is not compulsory and a failure to declare whether the decision is accepted is construed as a refusal. An award is binding, however, if both parties have previously agreed to such an award.

The Berlin court, between 1902 and 1908, was appealed to by both sides in one hundred sixty-four

cases and by one side in sixty instances. Most of the applications from one side are from the workers. Out of one hundred forty applications for arbitration in the empire in 1908, one hundred thirty-four were from workmen while only six came from the employers. Out of one thousand two hundred sixty disputes submitted by both parties in the empire between 1902 and 1908, nine hundred eight were settled either by agreement or awards acceptable to both parties. In seventy-six cases the board failed to reach a decision.

Mercantile courts for the settlement of disputes between merchants and their employees were established in 1904.

For the settlement of individual disputes, the German industrial courts are composed of at least four assessors and a president and vice-president. The latter must belong to neither side of the controversy. All the officers of an industrial court except the assessors are paid salaries. The position of assessor is regarded as honorary. In disputes of great importance several assessors may be called, but they are always present in equal numbers from both sides. They are drawn from separate lists, one elected by the employers and one by the employees. Different cities elect assessors in varying

numbers according to the business and local regulations. Berlin has four hundred twenty, Dortmund three hundred forty-six, Leipzig ninety, and thirty deputy assessors. Small fees are collected by the courts and small fines are levied. The municipality must bear all expenses of the courts not covered by fees and fines.

Industrial courts operate not only for the conciliation or legal decision of individual disputes and the conciliation and arbitration of collective disputes, but for the guidance of public opinion and of public officials and legislative bodies in matters where expert advice is needed. The jurisdiction of industrial courts in individual disputes is limited by the arbitration courts of the guilds, organized quite like the industrial courts, or by legal statute, but generally extending over all industrial occupations. Special courts exist for special industries. Even after a court is organized for hearing in an individual dispute or a collective dispute, it is charged with the duty of attempting conciliation at any time before a decision is given, if conciliation seems feasible. Hearings generally are public, though they may be private. The decisions of the court in individual disputes are determined by a majority vote. In the determination of individual disputes, the de-

cisions are subject to appeal to the local civil court, or they may be contested by "opposition" where a judgment has been given by default. Opposition is merely a process by which a defaulted judgment may be reopened. The appeals are limited to amounts involving twenty-three dollars and eighty cents.

Table No. 4, on page 79, shows an epitomized history of German strikes from 1903 to 1912. The figures for Berlin are given separately but included in the summary for Prussia, the figures of which are included in the summary for the German Empire. The summary shows that the empire had the greatest number of strikes in 1906, although fewer strikers were involved than in 1905. For the whole empire, the table shows an average of more than two thousand one hundred strikes for the ten-year period. The last three columns of the table show the result of the strikes for the period. An average of four hundred eight strikes annually were completely successful, while an average of eight hundred fifty-eight were partially successful and an average of eight hundred sixty-five were complete failures.

The table at the bottom of page 80 shows the results of strikes for three years, 1909, 1910 and

TABLE NO. 4

States and Divisions	Ended Strikes	Number of			Highest Number of Contemporary Strikes		The Strikes Had			
		Trades Represented in Strikes	Employed in Different Trades Represented in Strikes		General	Under 21 Yrs. Old	Complete Success	Partial Success	No Success	
			General	Under 21 Yrs. Old						
Berlin										
1903	227	1,171	40,729	2,120	14,080	784	46	69	112	
1904	255	3,103	36,267	3,419	14,837	761	90	71	94	
1905	245	2,336	123,948	2,432	34,552	661	68	87	90	
1906	283	3,939	60,551	2,958	26,803	743	68	88	127	
1907	130	3,349	46,510	1,566	28,925	298	18	35	77	
1908	69	430	15,464	509	4,400	217	15	16	38	
1909	104	417	32,780	1,373	7,761	372	27	27	50	
1910	221	818	71,564	4,108	15,511	1,420	56	78	87	
1911	187	1,567	148,458	5,667	42,036	2,120	49	57	81	
1912	159	1,050	57,671	7,008	16,715	2,065	32	44	83	
Prussia										
1903	841	4,193	127,261	18,445	51,633	7,151	176	262	403	
1904	1,190	6,939	183,464	29,209	70,146	9,196	301	418	471	
1905	1,401	8,492	635,275	96,893	338,675	57,026	322	555	524	
1906	1,893	10,245	419,802	66,659	152,045	20,443	352	812	729	
1907	1,204	8,055	254,188	40,433	108,332	13,085	192	476	533	
1908	692	2,360	120,843	20,430	33,902	5,190	103	212	377	
1909	829	2,716	160,572	24,578	56,350	8,377	160	252	417	
1910	1,191	4,058	227,562	32,294	79,997	12,424	242	487	462	
1911	1,412	5,993	355,589	42,398	130,135	15,849	268	621	523	
1912	1,461	4,277	673,479	120,381	313,003	47,902	213	551	697	
German Empire										
1903	1,374	7,000	198,636	30,059	85,603	12,047	300	444	630	
1904	1,870	10,321	273,364	44,405	113,480	15,036	449	688	733	
1905	2,403	14,481	776,984	121,382	408,145	67,820	528	971	904	
1906	3,328	16,246	686,539	113,021	272,218	39,894	613	1,498	1,217	
1907	2,266	13,092	445,165	73,010	192,430	27,248	373	930	963	
1908	1,347	4,774	199,371	33,862	68,392	10,674	206	437	704	
1909	1,537	4,811	233,831	38,818	96,925	13,920	283	520	734	
1910	2,113	8,276	374,038	56,549	155,680	21,904	419	908	786	
1911	2,566	10,640	594,860	90,154	217,809	31,021	497	1,186	886	
1912	2,510	7,255	887,041	158,150	406,314	62,454	415	1,001	1,094	



1911, computed upon a percentage basis; also the result of strikes computed upon the number of strikers involved. For the three years, nineteen per cent. of the strikes were fully successful, forty-one per cent. were partially successful and fifty-nine and seven-tenths per cent. were unsuccessful. Thirteen per cent. of the strikers were successful in their cause, fifty-four per cent. were partially successful and thirty-two per cent. failed.

In 1911, an average year, there were two hundred thirty-two lockouts, involving slightly less than two thousand establishments and about one hundred forty thousand workers out of a total of three hundred thousand. Lockouts were fully successful in thirty-one per cent. of the cases, partially successful in sixty-three per cent. and unsuccessful in six per cent. of the cases.

Between 1902 and 1908, applications for a board of arbitration were made by both sides in about

TABLE NO. 5

Year	Percentage of Strikes			Percentage of Strikers		
	Fully Successful	Partly Successful	Unsuccessful	Fully Successful	Partly Successful	Unsuccessful
1909.....	18.4	33.8	47.8	14.5	44.9	40.6
1910.....	19.8	43.0	37.2	13.1	56.1	30.8
1911.....	19.4	46.2	34.4	12.1	62.3	25.6

twelve hundred cases, by employees only in eleven hundred cases and by employers only in less than fifty, a total of two thousand three hundred fifty cases. There was an agreement before an award was given in seven hundred seventy-eight cases, an award in one hundred ninety-three cases, and neither an agreement nor an award in four hundred sixty-one cases. Both sides accepted the award of the arbitration board in one hundred thirty cases, and it was accepted by the employers only in twenty-seven cases, the employees only in forty-two cases and by neither side in thirteen cases. In 1908, a typical year, there were more than one hundred thousand cases of individual disputes between workmen and employers in the German Empire brought upon complaint of the workmen and about six thousand cases brought upon complaint of the employers. Of this number, agreement was reached in nearly fifty thousand cases. There was a judgment by default in eleven thousand cases and final judgment in eighteen thousand cases. The claim of the plaintiff was renounced by the defendant in about three thousand cases and acknowledged in fifteen hundred cases.

The law requires the formation of industrial courts in all towns of over twenty thousand popula-

tion, but they may be formed elsewhere at the option of the state or on joint application of employers and work people.

The industrial code provides for workmen's committees in collieries and industrial works of certain kinds. They constitute a private arrangement between employer and work people. In the larger cities wage agreements are common. They fix the scale of wages, hours, overtime and other conditions of employment. Over three thousand agreements are in force. In 1906 alone, agreements were signed affecting some three hundred thousand work people. Employers complain that such agreements have been made the entering wedge by which higher and higher wages are exacted. Agreements fix a minimum rate and therefore are a boon to the inefficient and of no avail to the very efficient worker, say the employers. Conciliation boards and courts of arbitration have added greatly to the significance and scope of special agreements by holding them to apply to all workmen in a given industry, whether organized or not. In larger cities, workmen are more perfectly organized than in smaller cities.

The influence of Socialism as a potent factor in German society and consequently in German indus-

try is felt more keenly now than any time since 1875, when the first union of Socialist forces was effected.

Two great revolutions took place during the eighteenth and early part of the nineteenth century. One was the industrial revolution led by Robert Owen and followed the age of invention when the process of manufacturing textile fabrics was transformed by the advent of the machine. This revolution began in England. Another great revolution was that in the realm of thought, having its origin in France and owing its inspiration to the teachings of Voltaire, St. Simon, Montesquieu and Rousseau.

In the wake of these revolutions is a third, mainly political, now surging in Germany and Russia. It began after the Revolution of 1848, with a lecture by Lassalle in Berlin, presenting the historical and philosophical origin of the state. This date is called the birthday of German Socialism. Lassalle contended that the Revolution of 1848 had freed the fourth estate as the first French Revolution had freed the third. Later he organized the Universal German Workingman's Association, out of which grew the Social Democratic party. In 1868, the association adopted the international program of Karl Marx and the next year the Social Democratic Workingman's party was formed at Eisenach.

After the Franco-Prussian War, speculation precipitated a wide business depression and a fall in wages. Men were thrown out of employment and distress was universal. What was more natural than the rapid rise of a party which offered a specific program of relief? The first effect of the union of Socialist forces in 1875 was seen in the elections of 1877. In 1871, the party cast about one hundred twenty-five thousand votes, electing two members of the Reichstag. In 1877, it cast nearly a half million votes, electing twelve deputies.

	Popular vote	Deputies
1871.....	124,655	2
1877.....	493,288	13
1887.....	763,128	11
1893.....	1,786,738	44
1898.....	2,107,076	56
1903.....	3,010,771	81
1907.....	3,258,968	43
1912.....	4,250,399	112

The growth of the party since 1871 is indicated by the popular vote and deputies sent to the Reichstag in typical years. Although the party polled more votes in 1907 than in 1903, the number of deputies elected was less, owing to the unbalanced system of representation. There was an enormous gain in 1912 both in popular vote and number of deputies.

In sixty-eight towns the Socialist party has at least one daily newspaper and in three towns two or more newspapers. Although the membership in the Socialist trade unions is more than two and one-half millions, by no means all the membership is organized for political purposes. A large part of the membership has nothing to do with the political propaganda of the Social Democratic party.

Social Democratic organizations, however, have been foremost in directing the working men's strikes. The most serious strike ever known in Germany occurred in the coal mines of Westphalia and the Rhenish provinces in 1889. It lasted only a few weeks and resulted in a substantial victory for the strikers. Public opinion and government interference were responsible for a strikers' victory in the Westphalian coal mine strike of 1905. The unyielding attitude of the colliery owners cost them a reduction in hours of labor, abolition of fines, workmen's committees guaranteed by law and other important concessions.

During the fifteen years, 1890-1905, the Social Democratic unions were involved in over eleven thousand strikes and lockouts in which nearly one and a half million persons were concerned. In the single year of 1906, these organizations spent three

and one-quarter million dollars in strikes and lock-outs.<sup>2</sup>

While Germany has gone very much further than any other European country in doing the small things which secure a minimum of comfort to her work people, the plane of living, measured by world standards, is still far beneath that which painstaking skill in industrial works ought to command. In this respect, the German workman is much worse off than the American wage earner. Particularly is this so if he is highly efficient, because maximum wages and living standards are much lower in Germany. But notwithstanding the paternalistic endeavors of the German state to secure minimum standards of comfort among the working classes, industry is not likely to be established on a stable basis until the shackles of aristocratic preferences are thrown off. The Social Democrats are bent on accomplishing this feat and it is uncertain how long the struggle may continue.

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<sup>2</sup>From 2,551 branches with a membership of 277,659 in 1891, the Social Democratic unions had grown to 11,878 branches with a membership of 2,530,390 in 1912. The total membership of the German trade unions, including the Socialist unions, in 1912, was 3,256,819.

## CHAPTER IV

### FRENCH EXPERIMENTS

**I**NDUSTRIAL arbitration and conciliation in France dates practically from the creation of the councils of experts (*Conseils des Prud'hommes*) by Napoleon I in 1806, after his return from Elba. These councils were the successors to the ancient corporative tribunals which had held certain jurisdiction in the silk trade and which were swept away when the trade guilds were abolished in 1791.

The trade guilds had existed in France from the time of the Middle Ages. They had arisen as a counter-irritant to the tyranny of feudalism and in time had come to exercise a tyranny that was quite as obnoxious to Turgot, minister of Louis XVI, as was feudalism to the earlier French monarchs. Work in different trades was conducted by a few master workmen, incorporated into guilds, who enjoyed a complete monopoly of production.

Inhabitants of Lyons, center of the silk industry, had been loyal to the first Napoleon and fêted him



on his return. Incidentally, they took diplomatic advantage of his good feeling toward them in 1806 to ask the restoration of the corporative tribunals. The councils of experts were created in response to this request.

The councils of experts originally were composed of five employers and four foremen, while the guild tribunal was composed entirely of manufacturers. The councils of experts were established to settle minor difficulties by conciliation, or, in the failure of conciliation, to adjudicate formally any matter involving less than sixty francs. The bureau of conciliation, composed of one manufacturer and one foreman, met once a day while the general bureau of arbitration met once a week to decide cases in which the bureau of conciliation had failed. By 1804, fourteen French towns had established councils of experts. In 1894, there were one hundred seventeen councils in France.

As early as 1867 premiums were offered at the exhibition in Paris for conspicuous successes in establishing friendly relations between "masters and men," and many interesting examples of well-requited effort from Germany and France were offered.

The explosive character of French society has

become a sinister platitude of the historian, the most familiar phase of that country's political and social life during the last century. While it is true that France enjoyed comparative tranquillity for a period of forty years, the elements of self-destruction are still present, despite heroic sacrifices and remarkable unity in warding off the German invader.

It is too much to expect that French industry was very peaceful in a period when the people were fighting behind barricades in the streets of Paris for fundamental political rights. It is too much to expect that France made any considerable progress toward industrial peace when its people were submerged in blood by succeeding political revolutions. While the political revolution has flourished in France the industrial revolution has also waged with increasing fury.

Within a brief space, it is difficult to present a true picture of French industry during the years immediately following the Restoration—the enthronement of Louis XVIII in 1815. It is true that until after the Revolution of 1830, the working classes were passive. But their misery was in inverse proportion to the government's concern for them. The working classes were hostile to the government because they were bitter against the Bour-

bons. They had really gained very little by the first revolution, since it made no difference who were their oppressors, if oppression remained a fact. The revolution had merely marked the rise of an industrial bourgeoisie, equally as unfortunate for the workers as the old landed aristocracy of the Bourbons. The French working classes suffered severe hardships from the introduction of machines—diminished wages and unemployment. Imperfect and defective machines and unventilated mines took a heavy toll of lives and spread disease. The introduction of women and children into industry as competitors of males further depressed wages. Damp cellars without light or air, where the workmen were compelled to live, added to their torture.

The French constitution of 1791 had declared that there should be a general bureau of public aid for the purpose of bringing up foundlings, of caring for the infirm poor, and of providing work for such of the able-bodied poor as were unable to obtain it by their own efforts. This was merely the English poor tax in another form. The constitution of 1793 declared that society owed a living to its unfortunate citizens, either by procuring work for them or by assuring the means of life to those unable to labor. But the constitution of 1793 also

declared that society not only should provide labor for its citizens but that this labor should insure their subsistence. After 1793, this theory was dropped in the constitutions of the French people but the revolution of 1848 revived the doctrine and it later was adopted as a formula of the socialistic school.

The Revolution of July, 1830, the Revolution of 1848 and the establishment of the present republic are beacon lights which shed their rays on bivouacked armies through which and by which French society, purged of the curse of Bourbonism, has been plunged into woes scarcely less bitter. But there is a cause for hope. Between two extremes of irresponsible socialism, syndicalism and anarchy, on the one hand, and a reactionary spirit of aristocratic atavism on the other, the social consciousness of the French people has flowed on in ever-increasing volume and more and more devoid of the elements which make for self-destruction.

If we are to understand what France has accomplished toward the achievement of industrial peace, we must at least know briefly the succession of events of the last century.

In 1815 the use of machinery in the different branches of industry had not become general. The home and not the factory was the seat of the textile

industry. Now, all this has changed. To-day, the industrial output of France is valued at more than three billion dollars annually. This sum is more clearly understood when we remember that French industry consumed about one million tons of coal annually in the last century and thirty-seven times that amount at the beginning of the present. The consumption of raw cotton has increased enormously from 1815 to the present date; the production of brass from a little over two hundred thousand tons in 1830 to somewhat less than three million tons; the production of iron from one hundred fifty thousand tons in 1830 to about a million tons; and the production of steel from five thousand tons in 1830 to more than two hundred thousand times that amount. These contrasts present one aspect of the industrial revolution and signify the growing acuteness of the industrial problem due to the multiplication of industry.

At the close of the reign of Charles X in 1830, twenty-four per cent. of the French people lived in the city. In 1896, the percentage of the urban population had increased to forty per cent. In 1906, it was only two per cent. greater than in 1896. France probably is less troubled from a congested population than any other European country.

The Revolution of July, 1830, was not without its effect on the industrial life of the country. Disturbances became more and more common. In October, 1831, the silk weavers at La Croix-Rousse at Lyons demanded an increase in wages. The prefect made an attempt at mediation which was bitterly resisted by the employers. A minimum tariff of wages, drawn up under the direction of the mayor by delegates from the working men, the employers' delegates having refused to act, was abolished, but not until the national guard had been compelled to retreat in the face of an armed body of strikers. The years 1832, 1833 and 1834 were marked by serious insurrections of the working men in a score of industrial cities. Paris passed through a fierce conflict at this time.

Following these outbreaks, a law of April 10, 1834, against meetings and associations raised the fine of from sixteen to two hundred francs in the Napoleonic code to five times that amount and permitted imprisonment. But the law applied to individual members of an association whereas the Napoleonic code was aimed only at the instigators, chiefs or directors.

In 1841 a child labor law, bitterly opposed by the employers, was passed. The act applied to es-

tablishments where mechanical motive power was used and which gave work to twenty or more employees. It fixed the age limit at twelve years but authorized eight hours of labor, broken by rest, for children of from eight to twelve years; twelve hours of labor from twelve to thirteen, and forbade night work for children under thirteen. Under the age of twelve, apprentices were required to attend school.

It was during the reign of Louis Philippe, 1830-48, that the ideas of St. Simon, Enfantin and Chevalier began to find a lodgment in the minds of the French people. Fourier Cabot, Pierre Leroux and Louis Blanc, all of whom were either collectivists or communists, found scores of followers during this period. Proudhon, who denied the validity of all property, was also an influential figure of this epoch. The philosophies of these teachers added to the unrest of the times.

The Revolution of February 24, 1848, which overthrew the monarchy of Louis Philippe, increased the electorate from two hundred forty-one thousand to ten million, annulled all laws restricting freedom of the press, set on foot the free and compulsory education of the masses, the establishment of adult

schools as complements of the primary schools and also technical instruction.

The Revolution of 1848 also proclaimed the right of its citizens to labor. On February 26th the following decree was posted on the walls of the capitol:

"The provisional government of the French republic guarantees the subsistence of the workmen by labor. It agrees to guarantee labor to all citizens. It recognizes the fact that working men should associate themselves together in order to enjoy the legitimate profit of their labor."

After the Revolution of 1848, and under the dictatorship of Monsieur Louis Blanc, France undertook seriously the socialization of credit, labor, banks, insurance companies and the railroads. National workshops were established by the government. One article of the Luxemburg proclamation read:

"The right to labor is the right of every man to labor by working. Society ought by all productive and benevolent means at her disposal and by those which will be subsequently organized, to furnish labor to able-bodied men who can not procure it in any other way."

Another article of the same proclamation read:



"The main guaranties of the right to labor are liberty of labor itself, freedom to form labor associations, free instruction, professional education, savings and other banks and the establishment by the state of great works of public utility to provide labor in case of the stoppage of work, for unoccupied hands."

After the Revolution of 1848 had subsided, there was an abundance of work, due to the reconstruction of the capitol, all of which made Napoleon III very popular with the working people. An army of nearly a half million was employed in building and other public works. Under the influence of the English trade unions and the mutual credit system and people's banks of Germany, obtained by Schulze-Delitzsch, cooperative societies in the field of consumption, production and credit began to multiply in France. These societies had grown to a membership of one and three-quarters millions at the beginning of the present century.

The establishment of the national workshop which followed in the wake of the revolution, was just about the last step in the demoralization of the French workmen. The national workshops exacted only a nominal service for a daily wage from the government, varying from one-half to two francs. The inspiration for the institution of the workshops

was a noble one, since they were established out of pity for the unemployed, but the high purpose of their founders did not contribute to their success. The number employed in the national workshops soon arose to more than a hundred thousand and strikes became frequent.

In 1850, a superannuation fund was founded by the government and in 1851 free judicial aid was provided for the French people.

Under Napoleon III, 1848-1870, certain articles of the Napoleonic code interdicting coalitions were stricken out. An act of Napoleon III also abrogated a law of 1849, putting an end to a system which forced tribunals to judge each year an average of seventy-five trials resulting from strikes. The law of 1849 against coalitions of working people simply reproduced certain provisions of the Napoleonic code. A new law recognized the right of the working men to concert for the purpose of obtaining an increase in wages and to strike. It punished only those offenses which brought about simultaneous cessation of labor by means of violence, menace or fraud.

After the restoration of the empire in 1862, with Napoleon III as king, France took part in the Crimean War in 1854-1856, and in 1857 participated

with the English in an expedition against China. In 1859, France engaged in a war with Austria. These wars tended to divert the attention of the people from industrial works, and the demands for soldiers prevented the disasters which might have resulted from an oversupply of labor. Then came the Franco-Prussian War of 1870, which ended in the defeat of the entire French army under Napoleon III, followed by the establishment of a third republic with Thiers as the first president. During the latter years of Napoleon III's reign and the first years of the third republic, industry was paralyzed.

In 1883, commissioners and inspectors of child labor were charged with the enforcement of a law of 1851 regulating the hours of work of adults. In 1890 the government suppressed the obligation of the working man to carry a certificate and provided for the appointment of delegates of miners charged with securing safe conditions for labor. In 1893 a free medical aid system was founded and in 1894 a superannuation fund for miners was founded. A law of 1898 awarded an indemnity to working men injured while performing any ordered task, even though the injury be due to the workman's imprudence. The act gave an indemnity

to the wife or children in case of the worker's death. In 1899, the indemnity act was extended to certain agricultural laborers.

Until 1884, the French government was bitterly antagonistic to labor unions. Since 1884, the government has maintained more or less benevolent relations with the working people. Trade unions were legalized in that year. *Bourses du travail*, it was provided by an act of 1884, might be established under the law in towns of five thousand inhabitants, and here labor meetings might be held under subsidy of the government. The bourses provided meeting halls and offices for secretaries where telephones, letter files and stationery were provided and the franking privilege of the government enjoyed. The Paris bourse in 1909 received twenty-three thousand dollars as a subsidy. These bourses perform the functions of labor exchanges and assist men in getting work, but the great national trade unions do not enjoy the privileges of government subsidies, and the membership of organizations having their meeting place in the bourses is very uncertain. Few of the members pay dues or assessments and the organizations have no benefit funds. No regular meetings are held. Neither the C. G. T. nor the Typographical Union had any-

thing to do with these bourses. There are, however, solid trade union organizations in France with large funds, which carry on works similar to the national unions of other countries. Among these are the miners', the printers', the railroad employees' and the metal workers' unions. The membership of labor unions numbers something over a million.

The French *Conseils des Prud'hommes*, the earliest tribunal in that country for the settlement of industrial disputes, assumed jurisdiction of individual disputes only. It was not until the enactment of the conciliation and arbitration law of 1892 that legal machinery was created for the settlement of collective disputes.

Under the act of 1892, the initiative may be taken by the parties themselves, or, in the case of actual strikes or lockouts, the initiative may be taken by a justice of the peace. Both parties may apply jointly for conciliation, or, if only one applies, it is the duty of the justice of the peace to notify the opposite party, who must reply within three days. In the application for or acceptance of conciliation, each party must name five persons to act as its representatives in conciliation. If neither party applies for conciliation, it is the duty of the justice of the

peace to request the parties to notify him of their willingness or refusal to accept conciliation or arbitration.

The justice of the peace is ex-officio chairman of the conciliation committee. Conciliation failing, the justice of the peace must endeavor to obtain arbitration, each side to name an arbitrator or both to agree on a common arbitrator. If arbitrators can not agree, they may name an umpire and if they are unable to agree upon an umpire, he is named by the president of the local civil tribunal. Decisions must be in writing and the expenses of hearings are borne by the Communes. Every feature of the act is voluntary. Reports of conciliation committees, arbitration boards and requests for and refusal of conciliation or arbitration are to be made public.

Between 1893 and 1903, ten years, there were nearly six thousand strikes and lockouts in France. In sixty-one cases, settlements were attempted before the strike or lockout and in one thousand three hundred fifty-two cases settlement was attempted after the strike or lockout had begun. Of the one thousand four hundred thirteen efforts at settlement there was a refusal or rejection of settlement in thirty-eight per cent. of the cases. Of the one thou-

sand four hundred thirteen efforts at settlement, the effort was initiated in five hundred fifty-six cases by the justice of the peace; in seven hundred eighty-two cases by the work people; in forty-two cases by the employer, and in thirty-three cases by both parties.

In other words, there were five thousand eight hundred seventy-four strikes and lockouts in France in ten years, 1893-1903, and one thousand four hundred thirteen efforts at settlement, in which five hundred ninety-five were successful and eight hundred eighteen failures. There were settlements in forty-two per cent. of the efforts at settlement and settlements in ten per cent. of the total strikes and lockouts.

The table No. 6 on page 103 shows that there were in France during the years from 1905 to 1912 an average of considerably more than one thousand strikes each year. The lowest number of strikers in any one year was slightly less than one hundred thousand in 1908, and the greatest number somewhat less than a half million in 1905. The table shows the number of establishments affected and the days lost on account of strikes for each year.

The table No. 7 on page 104 shows the operation of the French conciliation and arbitration act of

# FRENCH EXPERIMENTS

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TABLE NO. 6

SHOWING NUMBER OF STRIKES FOR EACH YEAR, 1905-1912, IN FRANCE, WITH NUMBER OF STRIKERS, NUMBER OF ESTABLISHMENTS AFFECTED AND TIME LOST BY STRIKERS\*

Year	Strikes	Strikers	Establishments	Days Lost
1905.....	830	177,666	5,302	2,746,684
1906.....	1,309	438,466	19,637	9,438,594
1907.....	1,275	197,961	8,365	3,562,220
1908.....	1,073	99,042	4,641	1,720,743
1909.....	1,025	167,492	5,672	3,559,880
1910.....	1,502	281,425	14,175	4,830,044
1911.....	1,471	230,646	16,148	4,096,393
1912.....	1,116	267,627	6,656	2,318,459

\*Compiled from Annual Reports of *Ministère du Travail et de la Prévoyance Sociale: Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage.*

1892 for the eleven years from 1902 to 1912. In that period there were fourteen hundred fifty-five boards of conciliation formed in sixty-one per cent. of the cases in which there were appeals for conciliation or arbitration. The number of disputes ended by boards of conciliation and arbitration was sixty and eight-tenths per cent. of the total number of boards formed. In five hundred three cases strikes were declared after disagreement of the boards of conciliation. The table shows that there were very few instances of appeal to arbitration as compared to the number of appeals for conciliation.

Table No. 8, page 105, not only shows the number of strikes for the period from 1902 to 1911, but



TABLE NO. 7

OPERATION OF FRENCH CONCILIATION AND ARBITRATION ACT OF  
1892 FOR THE ELEVEN YEARS, 1902-1912\*

Number of boards of conciliation.....	1,455
Proportion of boards in comparison to the number of appeals .....	61%
Number of boards having ended the disputes—	
By conciliation .....	831
By arbitration .....	55
Total .....	886
Proportion of disputes ended in comparison to the number of boards.....	60.8%
Number of refusals of recourse to arbitration—	
By masters .....	94
By workers .....	40
By both parties.....	90
Total .....	224
Number of strikes ended indirectly by the boards of conciliation after the meetings of the boards.....	65
Number of strikes declared or continued after dis- agreement of the boards of conciliation.....	503

\**Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage Survenus pendant l'Année 1912*, p. xv.

the number of appeals made upon the initiative of masters, workers, both parties and the justice of the peace under the act of 1892. There were appeals for boards of conciliation or arbitration in twenty and three-tenths per cent. of the strikes, but in eight hundred thirty-six cases one or both parties rejected efforts at conciliation. Other features of the operation of the act are also shown by the table.

TABLE NO. 8

**RESULTS OF EFFORTS AT CONCILIATION AND ARBITRATION UNDER  
FRENCH LAWS, 1902-1911\***

Number of strikes.....	11,706
Number of appeals before strike.....	172
Number of appeals made upon the initiative—	
Of masters .....	51
Of workers .....	1,016
Of both parties.....	100
Of justice of peace.....	1,213
Total .....	<u>2,380</u>
Proportion of appeals in comparison to the number of strikes .....	20.3%
Number of strikes ended in the course of the pro- cedure before the formation of a board.....	86
Number of rejections of attempted conciliation—	
By the masters.....	696
By the workers.....	42
By both parties.....	<u>98</u>
Total .....	836
Number of disputes abandoned by the workers or settled immediately after a refusal of conciliation	101
Number of strikes declared or continued after the refusal of conciliation.....	736

\**Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage Survenus pendant l'Année 1912*, p. xiv.

Table No. 9 on page 107 shows which party prevailed in the settlement of strikes from 1902 to 1912 by application of the French act and where efforts to apply the act failed. Strikers seem to have been more successful under the act than in fighting outside the act. Where the law was resorted to strikes

were successful in seventeen and two-tenths per cent. of the cases and where the application failed, strikes were successful in only seven and nine-tenths per cent. of the cases. More than half of the cases where the act was resorted to were compromised and nearly half of the strikes where the act was not resorted to were compromised.

The table No. 10 on page 107 shows the percentage of successful, compromised and unsuccessful strikes and strikers for 1902-1911 and the year 1912. While twenty-one and two-hundredths per cent. of the strikes from 1902 to 1911 were successful, only twelve and seventeen-hundredths per cent. of the strikers succeeded. About forty-one per cent. of the strikes and thirty per cent. of the strikers failed between 1902 and 1911. The statistics for 1912 are not especially significant.

The act of 1892, says Harris Weinstock, "has remained practically a dead letter, as neither side has, as a rule, availed itself of this medium for the peaceful settlement of their difference."

The gravest peril in French industry at the present time is the influence of syndicalism. The policy of syndicalism was first adopted at a congress of trade unions held at Nantes in 1894 and at Limoges in 1895. Representatives of the trade unions, which

TABLE NO. 9

SHOWING MANNER IN WHICH STRIKES WERE ENDED, BY APPLICATION OF THE FRENCH ACT OF 1892; ALSO WHERE THE APPLICATION OF THE ACT FAILED\*

Disputes ended by application under the law.....	1,141
Results—	
Successful .....	196, or 17.2%
Compromised .....	794, or 69.6%
Failed .....	151, or 13.2%
Disputes in which the application of the law failed.....	1,239
Results—	
Successful .....	98, or 7.9%
Compromised .....	587, or 47.4%
Failed .....	554, or 44.7%

\**Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage Survenus pendant l'Année 1912.*

TABLE NO. 10

RESULT OF STRIKES FOR TEN YEARS, 1902-1911, ALSO RESULT OF STRIKES FOR YEAR 1912\*

Results	Strikes		Strikers	
	Average for Ten Years 1902-1911	In 1912	Average for Ten Years 1902-1911	In 1912
Successful .....	21.02	17.29	12.17	6.78
Compromised .....	38.02	34.23	57.62	26.68
Failed .....	40.96	48.48	30.21	66.54

\**Statistique des Grèves et des Recours à la Conciliation et à l'Arbitrage Survenus pendant l'Année 1912, p. vii.*

had adopted syndicalism in 1894 at Nantes, formed the *Confederation Generale du Travail*. In 1902, the C. G. T. formed an alliance with the labor exchanges. Trade unions, affiliated with the C. G.

T., receive four thousand six hundred pounds a year for the ostensible object of finding employment for laborers, but it is now pretty well assured that the fund has been used for political propaganda.

Syndicalism aims at the destruction by force of existing organization and the transfer of industrial capital from the present possessors to syndicates or revolutionary trade unions. This it seeks to accomplish by the "general strike." As early as 1868 the International Labor Congress at Brussels declared "that if production were arrested for a certain time, society could not exist, and that it was only necessary for producers to cease to produce in order to make government impossible." Five years later, the Belgian section of the Internationalists invited other sections to prepare for a general strike. But it was the anarchist Tortelier, a Parisian carpenter, who, in 1888, first suggested the general strike as a definite policy.

It was Waldeck-Rousseau who put through the fundamental law in 1884 allowing labor unions to become syndicates, that is, to exercise legal collective action in defense of the individual interests of their members. Various municipalities, having established *Bourses du Travail* in 1886, a law was soon passed limiting the occupation of these bourses to

the syndicates. Millerand secured for employees of the state the privilege of joining unions and forming federations and Rouvier secured the right to school-teachers and postmen to form themselves into syndicates.

Two thousand three hundred ninety-nine unions, having a membership of two hundred thousand, are said to have belonged to the Confederation in 1906. These unions are now known as red syndicates, the others as yellow. In the general strike of trade unionism in France in 1907, the total number of trade unions was estimated at 4,857, of which 2,399 were in the Confederation. The number of workmen belonging to trade unions was estimated at 836,134, including 203,273 who belonged to the Confederation. In 1908, the C. G. T. was joined by the Miners' Association, with 25,000 members, and was strengthened by additions from government workers. In actual count, the C. G. T. numbered only 300,000 in 1911 out of 900,000 union members, out of, in turn, 9,000,000 French workmen.

The greatest leader of the syndicalist movement in France has been Georges Sorel, a bitter opponent of parliamentary socialism. The syndicalist outline declares for the emancipation of the workers by the

workers themselves and the creation by them of their own organs. Unions are to be used as units of production and distribution, to meet after the triumph of a general strike and to decide what production is necessary to meet the community's needs; to make an equitable distribution of the work to be done, taking into account the strength and capacity of each workman and leaving him free to produce in accordance with the amount of energy he can summon. Syndicalism does not propose the nationalization of society but seeks to dissolve all bureaucratic centralization and to syndicate all public services; to establish a new economic unit belonging to organized body of syndicalists, the telephone lines to the linemen and operators, the railway to the railway workers, the theater to the actors. Syndicalism espouses direct action and believes in that only. It appeals exclusively to the proletariat, has a constructive program and thus differs from anarchism. Its chief weapon is the strike, during which children of the strikers are to be shipped to cities distant from the seat of the strike so that they may not hinder the men. Strikers are to be fed in communists' kitchens while the war goes forward.

The C. G. T. is now a factor of considerable importance in French industrial disputes. It was the

C. G. T. which supported the postal strikes in March and May of 1909, which all but demoralized French business. Had the C. G. T. been joined by the railway employees at this time the very foundations of the republic would have tottered. The strike of the stable hands at Auteuil in the following June was a complete failure. Violence and sabotage accompanied this strike. Following the agitation of 1909, a measure proposing the prohibition of strikes by public servants was discussed but nothing was done, and in the latter part of the year a federation of one hundred eighty-one thousand civil servants was formed. It represented a large number of associations of state employees.

The government was successful in putting down the seamen's strike in March, 1910, which, in its latter stages, was supported by the C. G. T. Proceedings were instituted against the president and secretary of the federation and against five hundred strikers.

A strike of ten thousand railway men, under the auspices of the C. G. T., took place in May, 1910. The first strike subsided somewhat and then gradually spread to the north and west and on October twelfth resulted in a general strike officially called by the National Federation of Railway Servants.



The train service was badly disorganized. Violence was common. Prompt and effective interference by the government was successful in restoring order and work was resumed on all lines October eighteenth. Prime Minister M. Briand, who ten years before had addressed a popular meeting as a devotee of syndicalism, was finally forced to resign and some, at least, of the dismissed strikers were restored to their places.

By an act of July 22, 1909, a permanent arbitration council was created by the French government with a view to investigating disputes between shipping companies and their crews. The council has headquarters in Paris.

The council consists of three members appointed for three years by decree drawn up on the proposal of the keeper of seals, minister of justice, and selected from among the ordinary state councilors, also from the councilors of the Court of Cassation; also arbitrators selected for three years by the employers, who shall be present to the number of five at each arbitration; also arbitrators elected for three years by the employees, who shall be present to the number of five at each arbitration.

The three members from the State Council and Court of Cassation elect a president and vice-pres-

ident and constitute the central section of the Permanent Arbitration Council.

In each maritime district, the ship owners elect five regular and five deputy arbitrators. Each of four specified classes of employees in each maritime district elects five regular and five deputy arbitrators. In detail the act sets out how the council is made up for the settlement of a collective dispute. The central section is always present. Detailed provisions are also set out for the election of arbitrators and deputy arbitrators every three years.

When a collective dispute arises, the parties may submit their controversy to the Director of the Seamen's Register, or he may take the initiative in an endeavor to conciliate the parties. Upon the failure of conciliation, there is a roundabout process by which the services of the arbitration council are offered the parties. If they refuse arbitration, a certificate to that effect is entered by the central section of the council. If the parties agree to arbitration, the court is convened. It has full power of investigation, hearing and of giving judgment, although it does not appear that either party is bound by the judgment. The judgment is published. The public is not admitted to the council meetings.

On the face of it, this act seems too cumbersome

—the processes are too indirect—to be of very much practical advantage in settling disputes.

Public opinion in France is just as uncertain applied to an industrial problem as it is to a political dispute. Lately, public opinion has been arrayed on the side of the government and has enabled it to deal summarily with unjustifiable outbreaks of the working people. The government has earnestly opposed the doctrine that the state employees occupy the same position in society as the employees of private enterprise. The minister of labor said to Samuel Gompers in 1909 that "the work of postmen and government telegraphers, for example, must go on uninterruptedly if the country is to maintain order, peace, communication from place to place, publicity of current events and those conditions of commerce in which above all other classes the masses of the working men have a vital interest."

But public opinion in France sometimes follows extreme paths. It may veer from pole to pole, avoiding middle courses and disregarding prudence and self-control. It may be with the government to-day and opposed to it to-morrow.

"The French," says Sir Arthur Clay, "are notoriously a thrifty and provident nation, and although

no doubt a considerable number of the population in the great cities are possessed with a spirit of unrest, and are only too ready to welcome revolutionary agitation, yet when the imminence of a social cataclysm in which all property would be lost, and innumerable homes destroyed, was brought home to their minds, the national characteristics asserted themselves, and the determination of the public to give full support to the representatives of law and order in taking the measures necessary to protect them from so awful a catastrophe, was manifested in the clearest way.<sup>1</sup>

"The repeated failure of the C. G. T. to secure the obedience of any considerable number of workmen to its commands when it has declared a 'general strike,' " he continues, "has done much to reassure the public, and to destroy their belief in its power as an enemy of society. It has raised the cry of 'wolf' so often that the bourgeoisie are no longer much alarmed by its repetition."

Perhaps no better summary of the present condition of French industry and the working classes can be found than is contained in a paragraph from an article by Alfred Rambaud, professor in the University of Paris, in an article in *The Historian's History of the World*.<sup>2</sup>

"The working man of to-day is better fed, better clad, better housed, more generously provided in

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<sup>1</sup> No more striking evidence of the truth of this statement could be cited than the unity that has characterized the French resistance to German military oppression.

<sup>2</sup> Vol. 23, p. 215.

every way with worldly goods than was the working man of thirty years ago. He profits by all the inventions of a philanthropic legislature, enjoys for himself and his children free medical service and judicial aid, but can it truly be said that he is happier than his congener of fifty or sixty years ago? And if it is true, will he admit it? It is ingrained in the nature of man to let his sufferings for the lack of certain things outweigh his happiness in the possession of others. French working men are not inclined to seek comparisons in bygone times, they refuse to take into account any period but the present, to see anything but the existing difference between their own and their employer's condition. They display a greater animosity to-day toward the bourgeois class, that has made for them many sacrifices, than was ever cherished by their forerunners against the egotistical employers of 1830. Many among them would think it quite right to work only eight hours a day for high wages, and to have funds established for them to which they themselves would not have to contribute. Others also, who are depositors in savings banks and mutual aid societies, and in receipt of the income assured them by these institutions, give themselves airs of 'proletarians' after the fashion of the working man of 1830, whose only capital was a pair of shrunken arms. If they vote it is very often in favor of some extremist candidate, as though they had a horror of public tranquillity, and were not themselves the first to suffer from any disturbance of the peace. Furthermore they are beset by solicitations to join one or more of the many socialistic organizations—the Blanquists or the Allemanists—whose avowed mission it is to foment hatred between the classes, to pre-

pare the way for a 'universal strike,' and whose favourite counsel to the working man is to 'study the chemistry of revolution.' "

France's activity in behalf of social peace has been largely of an inhibitive character. Very few constructive processes have been attempted. A notable exception is an old-age pension plan framed on a contributory basis and inaugurated in 1905. Pensions of from five to twenty francs a week were paid to persons at least sixty-five years of age and persons permanently infirm, incapacitated or incurable. The expenses of the system, originally shared by the state, the departments and the communes, amounted to nineteen million dollars in 1909 when there were a half million beneficiaries. In 1912 the old age pension system was revised somewhat. Workers and employers now contribute to the fund until the worker is sixty years old. The state contributes one hundred francs. About nine and one-half million were contributing to the fund in 1912.

## CHAPTER V

### A COUNTRY WITHOUT STRIKES

THE Dominion of New Zealand, accredited as the origin of compulsory industrial arbitration, presents an array of social, political and industrial phenomena of very great and increasing interest to the student of industrial problems. Colonized by English-speaking people of rare zeal and determination in the last years of the first half of the nineteenth century, the country has enjoyed a history peculiar to the rugged pioneers who settled on the land.

New Zealand has an area somewhat less than Great Britain and Ireland but its climate is far more favorable and the soil, it is believed, would support a population of near ten million people. After the first steps in the colonization of the island New Zealand found itself face to face with a land problem which seriously hampered the future growth and prosperity of the country. Foreign syndicates had bought up the land, and determined

to hold it for speculative rises in value, prevented the settlement by home seekers, who might be expected to improve and develop it. This was the first great problem which confronted those men who had at heart the healthy development of the country and it is fair to say that they settled the problem promptly and wisely.

The system of compulsory arbitration in vogue in New Zealand, as a matter of fact, is compulsory only under certain conditions but it is the nearest approach to a mandatory system anywhere in use and therefore the subject of wide interest by students of industrial problems. Whether such a system of conciliation and arbitration as New Zealand has found adequate will operate with the same or approximate degree of success in a country like the United States may be determined by an examination of social, political and industrial conditions in the two countries. While conclusions can not be exact from the very nature of the question, they can not be very far wrong if we take into consideration all the factors bearing on the subject.

New Zealand is not a country without strikes, as some proponents of the New Zealand system would maintain, but the mere fact that during the first nineteen years after the enactment of the law



there were but forty-two strikes in the Dominion and half of these were without the scope of the law, is a splendid testimonial to the wisdom of its framers. Whether they found a universal system or not, they are to be accredited with having found a system that works well in the country for which it was specifically designed.

Although New Zealand has an area less than any one of seven of the largest American commonwealths, its population, now about one million, is only one-half as great as that of Wisconsin and less than the population of any one of thirty-one American states.

New York City has a population of more than four times that of New Zealand. Chicago is twice as large and Philadelphia is larger by one-half. The United States has forty-seven other cities each with a population of more than one hundred thousand, while New Zealand has only one, Auckland, in this class. Three other New Zealand cities have a population of more than sixty thousand, but aside from these four, there are only seven cities with a population of more than eight thousand. The four principal cities of New Zealand together have a population less than Baltimore, Boston, Buffalo, Cin-

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cinnati, Cleveland, Detroit, Los Angeles, Milwaukee, Minneapolis, New Orleans, Newark, N. J., Pittsburgh or St. Louis, yet more than thirty per cent. of the people of New Zealand live in the principal cities.

Mere bigness does not prove wholly that the United States is not adapted to the success of an institution which works well in smaller states. It does, however, raise a strong presumption of doubt and particularly when the character or fabric of that bigness is a factor of serious consequence. This, it will appear, is the case.

It is obvious that New Zealand has no great and complex problems of city government, no social problem of congested population with tenements and disease, no industrial problem of overcrowded trades and unemployment such as a country just emerged from an epoch of industrial over-development is likely to have on its hands. New Zealand has no highly specialized industries, no finely spun division of labor, and therefore, no glaring instances of economic dependence of the worker upon machines. Industrial development in New Zealand is far behind that in the United States.

It is noteworthy that New Zealand has no great

race problem like that of the United States. The Dominion immigration laws have been very strict for many years. In 1909 a rigid educational test was enacted. This act prohibits the landing of idiots, persons suffering from a dangerous or loathsome disease, certain convicted criminals and any person other than of British birth who fails to write out and sign in any European language a prescribed form of application. The country has been particularly strict in its regulation of Chinese immigration. The Chinese population numbered only 2,630 in 1911, more than 1,000 less than lived in the Dominion in 1896, when a law was passed laying a poll tax of \$486.60 on each Chinaman who came to the island. The character of the immigration is indicated somewhat by the naturalizations during the last twenty-seven years. In that period, about 7,500 persons were naturalized, of whom over 4,500 were from Germany, Sweden, Norway, Denmark and the Netherlands, 367 from Russia, 181 from France, 47 from Belgium, 236 from Switzerland, 126 from the United States, 292 from Italy and Sicily, 73 from Portugal, more than 1,000 from Austria-Hungary, 77 from Greece and 418 from China. Two hundred and thirty-seven were from

other countries. Those races which, for the past quarter century, have flocked to the American shores, are represented by inconsiderable numbers in the New Zealand immigration.

In 1910, not only were there living in the United States nearly nineteen million people born of foreign parents, but over six and one-half million were foreign born. In addition to the foreign born and those born of foreign parents, there were about ten million negroes in the United States. This vast foreign-born population, recruited from every country in the globe and lately from countries with a low standard of living, has thrust upon the United States such an industrial problem as New Zealand has never known and probably never will know. There, a large majority of the workers are English or of English descent, and a common standard of living prevails. What is flesh for one is also flesh for another. There, the wage question is not complex because it is possible to determine very nearly what is a living wage for all the people. No hordes of a million a year are flocking to the ports of New Zealand and there are no cities there like Gary, Indiana, for instance, where more than forty languages are spoken by the working people. Diversity of races

and the competition of one race with another makes the wage question and the question of working conditions an intricate problem in the United States.

It is significant that industry is much vaster in the United States than in New Zealand. New Zealand has less than seventy-five thousand persons engaged in the operation of factories, while the United States has nearly eight million. Less than four thousand persons are employed in the New Zealand coal mines, while the United States reported in 1909 over a million workers engaged in that industry. As compared to a little over two million tons of coal mined in New Zealand in 1910, the United States mined nearly five hundred million tons in 1908.

But the character of industry in this country is also different and it is indicated by the value of leading products for a single year. Agriculture dominates the industrial life of New Zealand, where in 1911 the value of agricultural produce amounted to \$113,000,000, the value of mine products to \$18,000,000 and the value of manufactured products to \$35,000,000. In a single year the agricultural products amounted to more than twice the mining and manufactured products.

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In the United States for 1909, the agricultural crops amounted to \$5,487,000,000, mining products to \$1,238,410,322 and manufactured products to \$20,672,052,000. Manufactured products, therefore, amounted to more than three times the total value of agricultural crops and mining products. From the fact that industrial problems are most acute in the factory and the mine, it is apparent that industrial peace will be far more difficult to attain in this country.

One important reason why compulsory arbitration should succeed in New Zealand and fail elsewhere is the strong organization of New Zealand working people. These organizations have a high standing because of wise and honorable leadership and because they have flourished without particular opposition from industrial leaders. Not only are the workers organized but the employers also. In 1910, 118 unions of employers, with a membership of 4,262, and 308 unions of workers with a membership of 57,000 were registered under the arbitration act. This was an increase of 75 employers' unions and a membership of 3,246 employers and an increase of 117 workers' unions and a membership of 39,102 workers over 1900. There were

about 60,000 members of workers' unions registered under the act in 1913 and about 10,000 members of workers' unions not so registered.

The membership of the workers' unions by trade groups in 1910 was as follows: agriculture, 4,142; building, 6,857; clothing and textile, 4,717; engineering and ship building, 3,383; food supply, 7,357; mining, 4,689; printing, 1,163; transportation, 17,104; other trades, 7,679. In the United States, the 1910 census showed approximately 38,000,000 people employed in various pursuits. Agriculture claimed about 13,000,000, trade and transportation nearly 6,000,000, manufacturing and mechanical pursuits about 10,000,000, domestic and personal service 5,500,000 and professional service 1,750,000.

From the fact that trade unionism was an established fact in New Zealand when the conciliation and arbitration laws were first passed and that these laws were prefaced on the theory that the workers and the employers were fully organized, New Zealand no longer has to determine such a question as whether a union shall or shall not be recognized. This question, the cause of approximately one-fifth the industrial disputes in the United States, was settled in New Zealand long before compulsory ar-

bitration became a fact. The Dominion of New Zealand has been foremost in the enactment of social legislation in behalf of the working people. Before the present arbitration laws were passed, New Zealand practically had eliminated its sweated industries. The government has been paternalistic from the first, and very probably the early necessity of solving a perplexing land problem crystallized the tendency in this direction. The comfort and well being of its workers have always been uppermost among the fixed policies of the country.

Government ownership and operation of railroads, telephones, telegraphs, coal mines, life, fire and accident insurance, and post-office savings banks are among the best known instances of the socializing tendency of the New Zealand government.

New Zealand's railway department employs about 10,000 hands and the postal department about 5,000. The deposits in the post-office savings bank of New Zealand more than doubled from 1900 to 1910. These banks had 380,585 open accounts at the close of 1910 as compared with 212,436 at the close of 1900. The average amount standing to the credit of each open account in the post-office savings bank in 1910 was thirty-seven pounds, one shilling, three pence, as compared to twenty-nine pounds, seven-



teen shillings, ten pence in 1900. Deposits in private banks and in building and investment societies also have greatly increased during late years.

There is an imposing body of laws, strictly enforced in New Zealand, regulating the hours of labor of adults and young persons, wages, sanitary and hygienic conditions, and these laws have settled permanently in New Zealand problems with which boards of arbitration still have to contend in this country and which remain as the greatest obstacles to a satisfactory understanding between employers and work people.

Among these laws are the old age pensions act of 1899, the factories act, the shops and offices act and the workmen's compensation act of 1908, the workers' dwelling act of 1910 and the shipping act of 1909.

The old age pensions act was passed subsequent to New Zealand's effort to regulate wages by state agency. Just as soon as wages were increased and hours shortened, it was necessary to make provision for inferior workmen and to relieve employers of having to pay maximum wages for inferior service. Old age pensions were provided to relieve the employer of this burden and the aged workman of distress during his years of reduced efficiency.

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Since the old age pensions act went into effect in 1899, New Zealand has paid out approximately fifteen million dollars in pensions. There were over fifteen thousand pensioners in 1911 who received from the state nearly two million dollars. The maximum pension is now one hundred twenty-six dollars and ninety-six cents a year.

The New Zealand factories act of 1908 was a consolidation of former legislation. It was amended in 1910. The eight-and-one-quarter-hour day and the forty-five-hour week with restrictive overtime which must be paid for is required for women and boys, except in woolen mills, where forty-eight hours a week are allowed. If men are employed over eight and three-quarters hours a day or forty-eight hours a week, overtime rates must be paid and the amount of overtime is limited. Hours for men are subject to awards of the arbitration court. Wages of young persons, statutory holidays, regulated hours of overtime, sanitation and hygiene of factories, provision for fire-escapes and drinking water are carefully set out in this act. Saturday is a statutory holiday. Restrictions as to working hours in laundries, by an amendment of 1910, were extended to proprietors as well as employees, in order to prevent unfair competition from the Chi-

nese. All factories are subject to rigid inspection. In the United States, the eight-hour day is far from universal, and prevails only in highly organized trades and in work done for the federal government and the several states.

The shops and offices act of 1908 is a consolidation of legislation, the first of which was enacted in 1892. The consolidated act regulates the hours of assistants in shops, which must not exceed fifty-two hours a week or more than nine hours a day, with the exception of eleven hours on one day and overtime under the warrant from an inspector. Overtime must be paid for and the shop must be kept clean and well ventilated. A weekly half holiday is compulsory. Minimum wages for young persons of five shillings a week with an annual increase of three shillings a week until one pound is reached are provided in the act. An amendment of 1910 puts all the assistants employed in hotels and restaurants under special provisions as to hours and working conditions.

A workmen's compensation act was passed in 1908 and a government insurance act of the same year provides for insuring employers against risk. The compensation act allows compensation up to \$2,430 in case of death and in case of total or par-

tial incapacity, the compensation payable in half wages with a limit of \$2,430 or six years' payment.

In 1908, several statutes were consolidated into the wages protection and contractors' liens act. It insures the regular payment of wages; permits attachments of moneys in the hands of employers when wages are in arrears; prohibits attachment of workers' wages, except in the case of any surplus exceeding nine dollars and seventy-two cents a week; prohibits payment for wages being made in anything except money or by approved check; entitles a contractor or worker to a lien on the lands or chattels of his employer and permits no deduction from the workers' wages for purposes of insurance against compensation for accident.

Proper sleeping and dining accommodations, ventilation and sanitation must be provided for wandering workmen utilized as wool shearers and for farm assistants employed the year round. Machinery is subject to rigid inspection, as well as scaffolds and gears used in the erection or repair of buildings.

Under the workers' dwelling act of 1910, Crown land was set apart and buildings erected for workers may be purchased by a deposit of forty-eight dollars and sixty cents and the payment of the balance in instalments ranging over twenty-five and

one-half years. On March 31, 1911, one hundred twenty-six workers' dwellings had been erected under the act. The Superintendent of the State Guaranteed Advances office may lend money for the purpose of purchasing or erecting a dwelling to any person employed in manual or clerical work not in receipt of an income of more than nine hundred seventy-two dollars per annum. Advances amounting to seven and one-half million dollars had been made under the system on March 31, 1911, four years after its institution.

Shipping is under strict regulation and seamen are guaranteed adequate protection under acts of 1908 and 1909.

Wages and the cost of living are important factors in the welfare of working people. Wages do not seem so high in New Zealand as in the United States, but working conditions are far more wholesome and employment is steady. From 1895 to 1907, there was an increase of nineteen and seven-tenths per cent. in wages in industrial occupations and for the same period an increase of twenty-nine and three-tenths per cent. in wages paid to agricultural laborers. The attorney general, however, is responsible for a statement made in 1908 that the cost of living for the preceding twelve years had in-

creased seven-hundredths per cent. faster than wages.

For nearly a decade, the United States has heard the hue and cry raised against the high cost of living. It has been shown repeatedly that wages, although on the rise, have not kept pace with the cost of living. The difference of seven-hundredths per cent. in New Zealand is not a considerable hardship as compared to the most conservative estimates of the widening chasm between wages and living in this country.

The city of Auckland and vicinity may be taken as typical of wages paid in New Zealand, although they do vary somewhat throughout the Dominion.

For 1910 farm laborers are rated at from \$4.86 to \$8.50 per week with board, harvesters receiving the highest wage or from \$6.08 to \$8.50. Without board farm laborers received from \$1.70 to \$2.43 per day and harvest hands \$.24 3-10 per hour. Among the artisans, masons were paid \$2.92 per day without board, plasterers and bricklayers as high as \$3.40 and as low as \$2.92. Cabinet makers, carpenters, boilermakers, blacksmiths, tinsmiths, wheelwrights, shipwrights, plumbers, painters, saddlers, shoemakers, coopers and watchmakers received from \$2.02, a minimum in the case of watch-

makers, to \$2.75, a maximum in the case of plumbers. General laborers received from \$1.94 to \$2.43 per day without board. Tailors received \$2.02 to \$2.19. Compositors were paid from \$11.66 to \$15.80 per week in Auckland but the maximum ran as high as \$19.44 a week in Hawke's Bay. Saw-mill hands received all the way from a minimum of \$10.21 at Auckland to a maximum of \$17.50 per week in Westland. Married couples without families received as servants all the way from \$340.62 to \$486.60 per year throughout the Dominion. This included board. Cooks were paid as low as \$9.13 per week and as high as \$12.15; laundresses, with board, by the week from \$3.65 to \$7.29; house servants from \$2.43 to \$4.86 per week. House maids were paid slightly higher. Needlewomen were paid from \$3.03 to \$7.29 per week without board.

Drunkenness and drinking can not be overlooked as an important cause of discontent among working people. The factory saloon especially may be looked upon as one of their greatest curses. Not only does excessive drinking breed discontent but expenditures for liquor impoverish the home of the working man and cause great domestic distress.

The year 1910 may be taken as typical of the

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amount of drinking in the Dominion of New Zealand and the United States. In that year, New Zealand, exclusive of Maoris, consumed an average of 10.632 gallons of spirits, wine and malt liquor, per capita. In the same year, the people of the United States consumed more than twice as much, or 22.7 gallons per capita. While the people of this country drank 20.66 gallons of beer per capita in 1910 the people of New Zealand drank only 9.741 gallons. But Americans also drank more distilled spirits in 1910, that consumed here being 1.46 gallons and that consumed in New Zealand being about half as much, or .737 gallons. New Zealand consumed less than one-fourth as much wine per capita, the figures being .154 gallons for that country and .67 gallons per capita for the United States.

Per capita consumption of liquor has increased alarmingly in this country. Between 1860 and 1910, it increased from six gallons per capita to twenty-two gallons. The consumption of all liquors, however, is slightly on the increase in New Zealand. It rose thirty-three-hundredths gallons per capita between 1900 and 1910.

The people of the United States consume nearly twice as much tobacco per capita as the people of



New Zealand. The per capita consumption here is four and forty-hundredths pounds and two and sixty-nine-hundredths pounds in New Zealand.

Careful precaution against pauperism, unemployment and want by safeguarding the personal welfare of working men and women has made the people of New Zealand the most contented of any people on earth. This contentment, partially, perhaps, due to the wholesome climate, is reflected in the death rate of the country, given as 9.22 for each 1,000 population in 1908. In the same year, the death rate of other countries was as follows: England and Wales, 14.7; Scotland, 16.1; Ireland, 17.6; Denmark, 14.5; Norway, 14.3; Sweden, 14.9; Austria, 22.3; Hungary, 24.8; Switzerland, 16.2; German Empire, 18.1; Netherlands, 15.0; France, 19.0, and Italy, 22.6. The death rate for all classes and all ages, according to the census of 1900 in the United States was 17 for each 1,000 population, nearly twice that of New Zealand.

The expectation of life is greater in New Zealand than anywhere on the globe. At ten years of age, the average duration of life in New Zealand is 53.094 years while it is only 48.72 years in this country, according to the American Experience Table of Mortality. At twenty, the expectancy of life

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is 44.551 years in New Zealand and 42.20 in the United States. At thirty-five, it is 32.829 in New Zealand and 31.78 in the United States. At fifty, it is 21.636 in New Zealand and 20.91 in the United States. At seventy-five, it is 7.16 in New Zealand and 6.27 in the United States.

When we consider the great length to which New Zealand has gone in preparing the way for a happy and contented body of work people, we do not much wonder that compulsory arbitration has proved successful there. We do not wonder that the public, acting through the regularly constituted instruments of government, and after having proceeded to extreme lengths in making working conditions wholesome, is able to maintain the superiority of the public interest in more or less trivial controversies between employer and employee. We do not wonder that strikes and lockouts can be prevented in that country. We have no cause to marvel that compulsory industrial conciliation and arbitration is successful. We should be surprised were it not successful.

From the earliest times, New Zealand depended almost altogether upon water transportation for communication between various parts of the two islands. In 1892, there occurred the organized

strikes of the workers in Australian colonies, in which the Seamen's Union took a leading part. Sympathy for the Australian cause practically resulted in a general strike of the New Zealand Seamen's Union, and trade was badly disorganized. As a result of this strike, the New Zealand arbitration law was passed in 1893 and became effective in 1894.

The minister of labor was designated to administer the act. It provided for local boards of conciliation in "industrial disputes" and a general court of arbitration. District boards were composed of three or five members, the chairman being chosen by the representative members from the working and employing classes who elected their members. They were appointed by the governor from nominations made by registered trade unions and registered employers' associations. The president of the court was chosen directly by the governor from the judges of the Supreme Court. Either party before a hearing had begun might require a dispute to be referred from the district boards of conciliation to the court of arbitration. Once a case was referred for conciliation, it was unlawful to call a strike or lock-out. Agreements might be made between the parties, but their enforcement was compulsory, the

same as an award by the arbitration court. Full power to compel the presence and testimony of witnesses was given the district boards of conciliation and the arbitration court. Every industrial dispute except indictable offenses came under the operation of the law, and since the act was based upon a free recognition of trade unionism, conciliation boards and the court were required to give preference to the members of trade unions.

While this act was regarded as a compulsory arbitration statute, there was no penalty for failing to register, and unregistered organizations did not come under the act. Awards were automatically extended to whole industries by the act of 1900, the amendments of 1901 and 1903 and an interpretation of the court in 1904.

Between 1896 and 1903, two hundred thirteen employers were charged with violating awards and one hundred seventy-one were convicted. During the same period, four employees were charged with similar offenses and three convictions were obtained.

The industrial conciliation and arbitration acts were consolidated in 1908 and amendments were added in 1908 and 1910. The *New Zealand Official Year-Book* for 1911 gives a summary of the main provisions,

Under the act the Dominion of New Zealand is divided into eight industrial districts. Any society consisting of not less than three persons in the case of employers or fifteen in the case of workers in any specified industry or industries in an industrial district may be registered as an industrial union. Any incorporated company may be registered as an industrial union of employers. Any two or more industrial unions of employers or employees may form an industrial association and register under the act. Industrial associations are formed usually for the whole or greater part of New Zealand, comprising unions registered in the various industries. Registration enables any union or association to enter into and file an industrial agreement setting out the conditions of employment. Although this agreement is limited to a period of three years, it remains in force until superseded by another agreement or an award of the court of arbitration, except where the registration of the union of workers concerned is canceled. In the event of a failure to reach an industrial agreement, registration permits the parties to bring an industrial dispute before the council of conciliation and, if necessary, before the court of arbitration.

A council of conciliation has no compulsory pow-

ers but merely makes an endeavor to bring about a settlement which, if made, is filed as an industrial agreement. If no settlement is reached, the council of conciliation is required to refer the dispute to the board of arbitration, which, after hearing the parties, may make an award. Such awards, like industrial agreements, are binding on all parties concerned. Unless otherwise provided, the award applies to the industrial district in which it is made. Awards are limited to a period of three years but remain in force until superseded by another award or by a subsequent agreement, except where registration of the union of workers has been canceled.

It is now impossible to refer a dispute directly to the court of arbitration without waiting for a hearing by the board of conciliation.

Four conciliation commissioners, holding office for three years, may be appointed and three were appointed in 1911, and each of the eight industrial districts was placed under the jurisdiction of the commissioner.

When a dispute arises, the commissioner is notified and recommendations are received for one, two or three assessors to act as representatives on the council of conciliation. Councils of conciliation are set up after notice to the other party by the com-

missioner and recommendations by them of an equal number of assessors.

The court of arbitration is appointed for all New Zealand and consists of three members, one of whom, the permanent judge of the court, possesses the same powers and privileges as a judge of the Supreme Court. The other judges are nominated, one by the various unions of employers and one by the unions of workers and their appointments determined by a majority of the unions on each side respectively. They hold office for three years and are eligible to reappointment. The judge and one member constitute a quorum. There is no appeal from the decision of the court, except in cases beyond the scope of the act.

Strikes and lockouts are illegal only if parties concerned are bound by an award or agreement. Workers are subject to a penalty of forty-eight dollars and sixty cents and employers to a penalty of two thousand four hundred thirty dollars for strikes and lockouts. Gifts of money are deemed to be aiding or abetting a strike or lockout and these are punishable by a fine. In certain industries affecting the supply of water, milk, meat, coal, gas or electricity, or the operation of a ferry, tramway or railway, fourteen days' notice must be given within one

month of an intended strike or lockout, whether subject to an award or agreement, or not. Strikes and lockouts are forbidden during the hearing of a dispute by the council or court of arbitration.

Breaches of awards and industrial agreements are punishable by fines of four hundred eighty-six dollars against a union, association or employer, and twenty-four dollars and thirty cents against a worker.

Since the passage of the New Zealand act in 1893 to the thirty-first of March, 1911, there was a total of forty-two strikes, of which twelve were of the slaughtermen. These twelve strikes occurred in 1907. Of the twelve slaughtermen strikes, six were within the scope of the act and six outside it. Of the forty-two strikes from 1894 to 1911, twenty were within the scope of the act and twenty-two outside the scope of the act. In 1909, there were four strikes in New Zealand, in 1910, eleven, and in 1911, up to March 31, two strikes.

The *New Zealand Year-Book* for 1911 is authority for the statement that the capital value of land almost trebled from 1878 to 1911. The year-book for 1908 shows that the hands employed for the period between 1901 and 1905 increased nearly one-fourth, and that the output increased about one-



third. Bank deposits increased from nineteen and ninety-two-hundredths pounds per head in 1890 to twenty-five and fifty-nine-hundredths pounds in 1907. Imports of boots and shoes more than doubled from 1895 to 1910. Woolen imports almost doubled from 1895 to 1905 and imported machinery more than doubled from 1895 to 1910.

Between 1895 and 1905, manufactures of boots and shoes increased thirty-nine per cent.; woollens, thirty-one per cent.; machinery and implements, ninety-five per cent. But imports continue to show a notable increase over domestic manufactures.

Harris Weinstock repudiates criticisms of the apparently abnormal increase in the debt of New Zealand since the passage of the compulsory arbitration act of 1894.<sup>1</sup> These critics, he says, call attention to the fact that in 1894 the Dominion debt was £38,000,000, or a per capita debt of \$278.57, whereas in 1908 the debt of the Dominion had grown to £66,000,000, or a per capita debt of \$320.00.

"I took pains," he says, "to have these statements analyzed, with the following results: I found that in 1894, out of the debt of £38,000,000, there was invested in productive works £17,162,000, leaving a non-productive debt of £21,838,896 (\$105,914,300) on which the people had to pay interest, whereas

<sup>1</sup> *Special Labor Report on Strikes and Lockouts*, Harris Weinstock, p. 139.

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in 1908 investment in productive works aggregated £47,416,743, leaving a non-productive debt of £19,047,154 (\$92,378,697), so that as a matter of fact, the debt on which the people had to pay interest had, in the intervening years, diminished by \$13,535,603. The productive investments yield the Dominion an income of from 3 to 7½ per cent., and go a good way toward lightening the tax burdens in other directions."

Perhaps nothing so completely demonstrates the strength of the New Zealand system of arbitration and its underlying basis of social justice as the Dominion's experiences with syndicalism and the effort of the syndicalists to carry out a general strike during the latter part of 1911, 1912 and 1913. The effort was a complete failure, and although more than fifty strikes were called during the period, all of them were lost; direct action was thoroughly discredited; the arbitration system and the government which stood sponsor for it emerged from the contest with added glory.

In December, 1913, a labor disputes investigation act, similar to the Canadian statute, was made to apply to workers' unions not registered under the arbitration act.

## CHAPTER VI

### AUSTRALIAN EXPERIMENTS

THE commonwealth of Australia has been somewhat more conservative in its paternalistic consideration of the working man's welfare than New Zealand, yet the six states of the commonwealth and the commonwealth government have proceeded much further in this direction than any other country except New Zealand. Australia has experimented with many different forms of conciliation and arbitration.

Victoria, having unsuccessfully tried out a system, beginning in 1896, modeled after the English councils of conciliation act of 1867, introduced a system of wages boards in 1896. This system still prevails. New South Wales, having failed to accomplish anything under a voluntary trades dispute conciliation and arbitration act of 1891, in 1899 conferred certain jurisdiction on the minister of public instruction, labor and industry, after the plan of the English act of 1896. This act, also unsuccessful, was

superseded by a compulsory arbitration law in 1901, following the outlines of the New Zealand law but minus any plan of conciliation. This act gave way to the industrial disputes act of 1908 with an industrial court and wages boards for each industry coming under the statute. A new law was passed in 1912, superseding that of 1908. South Australia set up a complex system in 1894 but adopted the wages board system in 1908. Queensland has the wages board system. Western Australia has an act in force, modeled after the New Zealand plan. The commonwealth act applying to interstate disputes was passed in 1904.

Originally, the wages boards created for and by the Australian states were set up for the specific purpose of regulating wages and establishing a minimum rate in each industry. From time to time the powers of these boards were extended to industrial disputes involving other questions besides that of wages. Australia, as well as New Zealand, practically has eliminated all industries which pay less than a fair living wage. The theory obtains generally throughout Australia that no such industries have a right to exist.

The six Australian states of New South Wales, Victoria, Queensland, South Australia, Western

Australia and Tasmania have a population of about half that of New York State and less than that of Illinois or Pennsylvania, yet Illinois with a greater population than the six Australian states has an area of only one-fiftieth that of the commonwealth. The population of Australia is an average of only one and five-tenths persons to the square mile.

New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania still have enormous areas of Crown land open to settlement and available to homesteaders on the most favorable terms. The government savings banks of New South Wales lend money to settlers and South Australia permits settlers to take up over twenty-four thousand dollars' worth of ordinary lands, or, if suitable for cultivation, sufficient for from five to ten thousand sheep. Payments may be made in sixty semi-annual instalments. Homestead blocks worth four hundred eighty-six dollars may be taken on perpetual lease or covenant to purchase and advances up to two hundred forty-three dollars may be made by the government to assist homesteaders in erecting buildings, dams or fences, or for clearing the land. Tasmania permits the purchase of two hundred acres of land at four dollars and eighty-six cents an acre on eighteen years' credit. Victoria,

under the closer settlements act, may advance two thousand four hundred thirty dollars to each settler from government funds for the improvement of the land. Advances up to three thousand four hundred three dollars are made for the improvement of lands settled in Western Australia.

With its millions of acres of unsettled land available to newcomers, it is not surprising that labor is scarce in Australia. Nor is it to be expected that labor conditions will become very much aggravated as long as the laboring man may become a proprietor of the soil and avoid unwholesome working conditions. In a country like the United States, where the public land is gone and where agricultural development has reached an advanced state, the factory worker has no alternative to which he may turn if wages fall, hours are long, or conditions of employment intolerable.

Manufacturing is on the increase in Australia. In 1910 there were fourteen thousand factories in the commonwealth, employing nearly two hundred and ninety thousand hands. These factories paid out in wages one hundred sixteen million dollars and had an annual output valued at about six hundred million dollars.

The mineral production in 1910 amounted ap-

proximately to one hundred million dollars, of which about one-half was gold. Coal, silver-lead and zinc were the leading products of the New South Wales mines. Copper and tin were the leading productions in Tasmania, gold and copper in Queensland and South Australia and gold and coal in Victoria and Western Australia.

In 1910-11, the six Australian states harvested ninety-five million bushels of wheat, over fifteen million bushels of oats and two million bushels of barley, thirteen million bushels of corn, and produced nearly six million gallons of wine.

The six states also produced nearly two hundred million pounds of butter in 1910 and the total dairy exports in 1911 amounted to about twenty million dollars. The wool production in Australia in 1910 amounted to a little less than one hundred fifty million dollars. Australia exported chilled beef amounting to about five million dollars; chilled mutton amounting to twice as much and flour to the amount of over five million dollars.

In a general way, these products represent the principal occupations of the Australian people. While industry is somewhat more complex and vaster in Australia than it is in New Zealand, it is far less so than in the United States. Mining and

manufacturing, as might be expected, are the sources of most industrial troubles in the Australian commonwealth. The *Australian Year-Book* for 1912 lists the several persons, male and female, engaged in the principal occupations as follows: professional, 111,190; domestic service, 111,456; primary producers, chiefly agricultural workers, 531,389; commercial, including transportation, 310,034; industrial workers, 441,951; pensioners, 26,458, and dependents, including children, 2,123,097.

The six principal cities of Australia are the capitals of the six states: Sydney, Brisbane, Adelaide, Hobart, Melbourne and Perth. Sydney and Melbourne are the largest cities. The population for the ten-mile radius was given as follows: Sydney, 649,503; Brisbane, 139,480; Adelaide, 189,646; Hobart, 39,937; Melbourne, 588,971; Perth, 106,792. The population of the cities proper, however, was much less than these figures indicate.

Australia has always encouraged the immigration of desirable classes of people. From 1851 to 1910, it is estimated that over six hundred thousand immigrants had been assisted in a financial way by the several Australian states. Notwithstanding that fact, the population remains largely British. In 1910 less than four per cent. of the population had



been born outside the British dominion and more than three million out of a population of less than four million five hundred thousand had been born in the Australian commonwealth. There is a marked prejudice in Australia against Japanese immigration. The Labor party is opposed to German immigration.

Australia has a system of old age and invalid pensions under which nearly eighty-three thousand persons received financial assistance in 1910. The average fortnightly old age pension is nineteen shillings and the average fortnightly invalid pension is nineteen shillings six pence. The six Australian states paid out on account of old age and invalid pensions in 1910 ten million dollars, or an average of two dollars and twenty cents for each head of population.

All the Australian states have a land and income tax similar to that of West Australia, where from one-half to one pence on each one pound of the unimproved value of the land is collected. There is an income tax of four pence on each one pound of income with an exemption of two hundred pounds (nine hundred seventy-two dollars) in Western Australia.

Education is compulsory throughout the common-

wealth of Australia and public instruction is free in the primary schools of New South Wales, Victoria, Queensland, South Australia, Tasmania and West Australia. In 1910 there were nearly eight thousand state schools, with a total enrolment of three-quarters of a million, and seventeen thousand teachers in the six states. In the commonwealth, four and five-tenths per cent. of the population over fifteen years of age were unable to read in 1901. This was approximately the same proportion which obtained in 1896. It is somewhat lower than the average illiteracy in the United States.

Taking into consideration the character of the Australian population—the relatively small percentage of foreign-born residents; the high educational standards for children and the low rate of illiteracy; the large surplus of land and the liberal state aid to colonists; the emphasis on agriculture as a vocation; the scarcity of labor generally and the state assistance given to the invalids and the aged—Australia has a much simpler problem than the United States or any of the European countries. As Australia becomes more and more a manufacturing state—when the land is exhausted—disputes between employers and employees, no doubt, will multiply. They are certain to do so unless Australia

is able to maintain a thoroughly enlightened and happy proletariat, working under favorable conditions.

Victoria and New South Wales were the first Australian states to undertake conciliation and arbitration by state agency, their first laws having been passed in 1891. South Australia passed the first arbitration statute in 1894 and West Australia followed in 1900. The commonwealth act was passed in 1904.

By the act of 1891, Victoria provided for the voluntary arbitration of collective disputes somewhat after the system of the English councils of conciliation act of 1867, except that the latter applied only to individual disputes and enforced arbitration. Under the Victorian act, any number of employers and employees of a locality might agree to form a council of conciliation and jointly petition the governor in council for a license to be issued at his discretion. Every licensed council was to be composed of an equal number of employees and employers, not less than two nor more than ten. Members of the council were elected. A chairman who might take part in the deliberations but who had no vote was chosen from outside the members of the council. Either or both parties, under the

act, might bring a matter before the council on complaint to the chairman. The matter was first referred to a committee of conciliation consisting of one employer and one employee. If this failed, the matter was laid before the council. This act always remained a dead letter.

In 1896, wages boards were introduced in Victoria. The original act made provision only for the regulation of wages for the women and children but was afterward extended to apply to adult operators of both sexes. Originally, it applied only to the clothing, furniture, breadmaking and butchery trades, but by an amendment of 1900 it was extended to all trades connected with factories, and by an amendment of 1907 it was extended to certain trades not connected with factories—carters, drivers, building, quarrying, distribution of wood, coke or coal. Wages boards consisted of from four to ten members and employers and employees were equally represented. If one-fifth of the employers or employees objected to a representative nominated for them, they might elect one. An independent chairman was appointed by the executive. The board held office for three years. Wages boards might be appointed on application of either party. A court of appeal, consisting of a supreme judge, had power

under the act to review the determination of boards, and assessors might be appointed to assist the judge. The act fixed an absolute minimum wage. While it was originally designed to guarantee a minimum wage, it has gradually grown to be used more for the purpose of conciliation.

Wages boards have power to determine the lowest wages in an industry and may fix a special wage for old, slow or infirm workers. Hours of labor are fixed by the boards and the wages of children. An average of thirty-eight convictions a year for violating determinations of wages boards was reported for the seven years, 1901-07.

If men do not accept the decisions of the wages boards and go out on a strike, the government, through the labor minister, may suspend the award in whole or in part not to exceed twelve months and leave the employers free to employ whomever they will and pay whatever they wish. Harris Weinstock, in his survey of Victorian labor conditions, says the wages boards have "more than made good." He declares they have eliminated sweating and aided the advent of industrial peace.

Victoria had an eight-hour day in the building industry as long ago as 1856, a standard not reached by the United States until 1903. Employers are

well organized. The trade unions are in good repute but the union and non-union workers generally labor side by side. In a period of twelve years, there were only eight or nine strikes and only one instance of a strike against a legal award, which, by the way, the strikers eventually won. Lately, labor has manifested some discontent with the conciliation and arbitration laws, because gains in wages have been small in recent years compared to gains during the earlier years of the operation of the act. One serious objection that may be raised against a fixed wage is the fact that the cost of living fluctuates and a fixed wage is not responsive to this fluctuation. In 1911, one hundred sixty-two trades were registered under the wages board act of Victoria. Fifty-nine of these trades and eighty-eight per cent. of the employees were subject to the jurisdiction of the wages board.

New South Wales passed its trade dispute conciliation and arbitration act after the great strike of 1891. It provided for a voluntary court of conciliation made up of sixteen members, an equal number appointed from the employers and employees, and a council of arbitration appointed by the governor. The third member of the council of arbitration was required to be an "impartial person."

The act was passed to continue four years but it was a complete failure, only two of the sixteen cases referred having been settled during the first year of the operation of the act. An appropriation to continue the boards was refused in 1894. The employers were hostile from the beginning.

The conciliation and arbitration act of 1899 conferred upon the minister of public instruction, labor and industry the power to direct a public inquiry on application of either party; to appoint one or more conciliators, and on the application of both parties, to appoint an arbitrator after the plan of the English act of 1896. This act was a total failure, largely because of the unfriendliness of the employers toward the statute.

A compulsory arbitration law, following somewhat the outlines of the New Zealand act but which did not provide for conciliation, was passed in 1901.

"The New South Wales system of compulsory arbitration has been in full operation, with the continued growth of the court's business," said Leonard W. Hatch in 1905, but "the act seemingly did not work as its authors had hoped." The law was superseded by the industrial disputes act of 1908, much against the wishes of the Labor party. The act of 1908 included a schedule of some eighty in-

dustries and provided for the appointment of a wages board in each industry on recommendation of an industrial court. Each board consisted of a chairman and not less than two nor more than four members, half employers and half employees. Appointment of members was made by the governor on recommendation of the industrial court but they were usually nominated by the respective parties. The chairman might be agreed upon or nominated by the industrial court. Boards had power to decide industrial disputes, and to regulate and control wages and working conditions. The industrial court took the place of the arbitration court under the act of 1908. Appeal from the wages board to the industrial court was allowed. A heavy penalty was fixed for causing strikes and lockouts. Two convictions under this clause resulted during the first year the act was in force.

The act of 1908 was superseded by the industrial arbitration act of 1912. This act created a court of industrial arbitration consisting of a Supreme Court judge and district court judge or barrister of five years' standing, appointed by the governor, also an additional judge and a deputy judge. Boards under the old act were dissolved. Twenty-seven industries were scheduled for which industrial boards



were appointed on recommendation of the court by the minister of the Crown. The schedule may be varied by the minister. Chairmen of the boards are appointed by the minister on recommendation of the court. He has no vote. From two to four other members of the board, half employers and half employees, recommended by the court, are appointed by the minister. Special boards may be created for jurisdictional disputes between trade unions. Industrial boards are created for a second schedule of industries. The jurisdiction of the boards includes all power exercised under the act of 1908. Their awards are binding for three years but on application to the court, the awards may be amended, varied, rescinded, or a new award substituted. Proceedings are commenced by reference to boards by the court or minister on application of employer or employee, when not less than twenty employees are affected. Boards have conciliatory powers. Special committees for conciliation are provided for metal and coal miners when more than five hundred are involved and a special commissioner, appointed by the minister of the Crown, is charged with wide powers to bring about settlements in cases not covered by the act. Lock-outs and strikes are punishable by heavy penalties,

and heavy penalties are also prescribed for breaches of awards and other offenses.

Boards have power to declare "that preference of employment shall be given to any industrial union of employees over other persons offering their labor at the same time, other things being equal." Declarations of preference may be suspended if employees engage in strikes.

About seventy-five trades registered under the 1908 act. Twenty-four trades, including sixty-two per cent. of the employees, had come under the jurisdiction of the wages boards by 1911. In 1912, the court of arbitration had made awards in one hundred thirty cases, each affecting many other disputes. New South Wales provided for the legal incorporation of trade unions, under prescribed conditions, and imposed legal responsibilities for the care of trade union funds in 1912.

South Australia provided for the registration of trade unions and employers' associations, industrial agreements and boards of conciliation, both public and private, in the act of 1894. Awards under the act were compulsory and it was an offense for a registered organization to engage in a strike or lockout. It was not necessary for employers or employees to come under the act, and as late as 1905

it was pronounced a complete failure for the reason that neither employers nor work people chose to accept what it offered them. South Australia adopted a wages board system in 1908 and one hundred thirty-nine boards had been created by the middle of 1910. They had decided ninety cases. Queensland has the wages board system.

Western Australia passed an act modeled after the New Zealand law in 1900 but this act was replaced by another in 1902. The original law was different from the New Zealand law in that it sought to prohibit strikes and lockouts altogether instead of simply prohibiting them after a reference to a board or court. The court had made awards in seventy-one cases in 1912, each affecting many other disputes.

In 1904, the Australian Parliament passed the commonwealth conciliation and arbitration act, which provided a system of compulsory arbitration similar to that in New Zealand for all interstate labor disputes. The commonwealth court was given power to employ the usual methods of conciliation, and failing in that, to make an equitable award binding on all parties. Strikes and lockouts were subjected to a penalty of four thousand eight hundred sixty dollars. Breaches of the court's award

were subject to a penalty of four thousand eight hundred sixty dollars in case of the employer and forty-eight dollars and sixty cents in case of an individual employee. The power to fix a minimum wage was lodged in the commonwealth court, also the right to deprive those failing to observe an award of all rights and privileges under the act.

One case arose under the act of 1904 during the first five years of its existence involving four thousand men in a New South Wales mine. It resulted in a victory for the men. The decision, however, was severely criticized by the employers and not wholly satisfactory to the men.

This act was amended in 1909, 1910 and 1911. The amendments of 1909 prevented employers from discharging employees about to be registered under the act. The definition of employee was extended to additional industries under the amendment of 1910, and the president of the commonwealth conciliation and arbitration court was authorized to compel the attendance of employers and workers when a labor dispute is threatened, under penalty of five hundred pounds. The definitions of "industry" and "industrial dispute" were extended by the amendment of 1911, amounting to an extension of the powers of the conciliation and arbitration court.

Government employees were permitted to come under the act by another amendment of 1911 and provision was made for their registration in group organizations.

On April 26, 1911, Australia by referendum vote decided overwhelmingly against giving to the federal government control of all trade and commerce instead of only interstate and foreign commerce. On the same date, the electors of Australia voted overwhelmingly against taking from the states the power to deal with wages disputes, even where state employees were concerned, and lodging that power in the commonwealth government. Opponents of the proposal pointed out that an elaborate system of wages boards already existed in the states and that it would be an enormous expense.

In 1911, the Labor party succeeded in ousting the Liberal ministry of Western Australia. The Liberal party held its own in Victoria and badly defeated the Labor party in South Australia but in New South Wales the two parties emerged from the elections about equally divided. The Laborites had a bare majority of one. In the commonwealth, however, the Labor party was successful in passing the commonwealth defense act after the plan laid down by Lord Kitchener when he visited the coun-

try in 1908. The act is aimed at defense against the "Japanese peril." All boys from the age of twelve to the age of twenty-six are liable to military training and after the age of twenty-six they are considered as reserves for the army. The Socialists resisted the passage of the act but they are not strong in Australia.

The Australian Socialists are opposed to legal arbitration. Both wings of the Industrial Workers of the World—the Chicago faction espousing direct action and the Detroit faction espousing parliamentary action—are represented in Australia. There are five locals of the I. W. W. in Australia and two in New Zealand. Needless to say the I. W. W. opposes the Labor party even more vigorously than it opposes the so-called Capitalistic class.

Whether Australian progress is due to the elaborate system of industrial legislation of the country or is a fact in spite of it, progress nevertheless is a fact. The population increased twenty-one per cent. from 1900 to 1911. In 1909, there were twenty-seven miles of railway for each ten thousand inhabitants in the United States while in 1911 there were thirty-nine and three-fourths miles to each ten thousand inhabitants of Australia. Savings-banks deposits are increasing yearly and deposits

in Australian banks are likewise increasing. The total number of depositors is more significant than the volume of deposits. In 1911 they numbered 1,483,573 or one out of every three of the entire population. Manufactures, agriculture and mining are in healthful condition and foreign commerce is growing. A mistake might be made in accounting for Australia's prosperity but no mistake can be made in maintaining that it is a fact.

## CHAPTER VII

### OFFICIAL INVESTIGATIONS

THE Canadian industrial disputes investigation act of 1907, with the amendments of 1910, was a notable departure from legislation theretofore enacted inasmuch as it undertook to prevent strikes and lockouts in certain industries until an official investigation of grievances could be made.

The act was founded on the theory that public opinion will operate with wholesome effect to avert an open breach between employer and employee if public opinion has available for its guidance all the facts in a controversy. It was contended by the proponents of the measure that the publication of a report made by *impartial* officials under sanction of the government would supply the facts required for the formation of an intelligent and active public opinion. This contention was made to appear the more plausible since the operation of the act was limited to public utilities—transportation, communication, mining, gas, light, water and power




companies—enterprises in which all the people have at all times a very intimate interest.

Although the act has not worked with universal satisfaction it has reduced the number of strikes and lockouts in Canada. For this reason and for the further reason that there is considerable sentiment favoring a trial of the statute in this country, an examination of industrial conditions in Canada, together with certain comparisons and contrasts with industrial conditions in the United States, seems warranted. Perhaps this examination will disclose certain differences in industrial conditions, upon which depends the success or failure of the Canadian act in the United States. Whether these differences in industrial conditions would affect the operation of the Canadian act in the United States, they are sufficiently marked to be interesting in any survey for legislation having as its object industrial peace.

Both countries comprise enormous areas of land, although Canada is the larger by seven hundred fifty thousand square miles. Canada has a population about equal to that of the United States in 1810, or, while the population of the United States was thirty and nine-tenths per square mile in 1910 that of Canada was less than two per square mile. This difference is an important one. Canada has

over four hundred million acres of land available for settlement in three provinces, Manitoba, Saskatchewan and Alberta, and every wage earner has the alternative, if conditions prove unsatisfactory, of becoming a proprietor on his own farm. That wage earners are becoming proprietors and that they possess a potent argument against conditions which make for industrial unrest is evidenced by the fact that in the year 1910 entries were made for 48,257 homesteads in Alberta, British Columbia, Manitoba and Saskatchewan. In that year, new settlers obtained over six and one-half million acres of Dominion land for a small investment. Opportunity to settle on the "free" land of the government does not insure the very best working conditions in industry nor preclude strikes and lockouts, as we may remember that this country had its strikes before the public land was all taken up. But it does serve as a powerful check against really bad conditions.

Any person who is sole head of a family, or any male over eighteen years, who is a British subject or declares his intention to become a British subject, or a widow with minor children of her own, dependent on her for support, may upon payment of ten dollars obtain entry to a quarter-section of Dominion lands in Manitoba, Saskatchewan or Alberta.



The homesteader must erect a habitable house, live upon the homestead six months and cultivate the land in each of three years. Homesteads may be purchased in certain sections at three dollars an acre.

Canada discloses the same tendency as the United States with regard to the movement of population—a tendency toward a congestion in large cities. The rural population between 1901 and 1911 increased seventeen per cent. while the urban population in the same period increased sixty-two per cent. But Canada has only four cities with a population of more than one hundred thousand, Vancouver, Winnipeg, Toronto and Montreal. Otherwise there are only two cities, Hamilton and Ottawa, with a population of more than fifty thousand. The whole population increased thirty-four and five-tenths per cent. between 1901 and 1911 while the increase in this country was twenty-one and two-hundredths per cent.

An alien labor act of 1906 required Asiatic immigrants to have two hundred dollars and a ticket to their destination to be admitted to Canadian ports. A five-hundred-dollar fee is charged Chinese immigrants. Fees ranging from twenty-five dollars up to five hundred dollars were charged all immigrants until 1910, when, owing to the scarcity of

railway laborers, the immigration acts were amended to admit railway construction laborers guaranteed employment by railway contractors, irrespective of the money qualifications. This change in the immigration laws proved a scarcity of unskilled labor and therefore the absence of a labor surplus. The absence of a labor surplus has obvious advantages for the wage earner, skilled or unskilled. But lately the Canadian government, facing the problem of wide-spread unemployment, has undertaken to deport aliens unable to support themselves—an evidence that this country must abandon its policy of artificially stimulating immigration. Henceforth, an oversupply of labor is to be a factor in the realization of industrial peace.

It does not appear that the Canadian population is gaining much by reproduction, since the immigration between 1901 and 1912 was 2,069,562 and the total increase in population between 1901 and 1911 was only 1,834,049. In the United States, however, for the last decade, a larger per cent. of the gain in population was from immigration than from reproduction.

Of the Canadian immigration, from thirty-seven to forty-eight per cent, is from the United Kingdom. In 1912, a typical year, the total immigration was

354,237, of which 138,121 came from the British dominion, 133,710 from the United States and 82,406 from other foreign countries. The British immigration amounted to thirty-nine per cent. of the whole and the immigration from the United States to thirty-seven per cent. of the whole, a total of seventy-six per cent. from the United States and Great Britain, leaving only twenty-four per cent. from foreign countries. Of the twenty-four per cent. coming from countries other than the United States and Great Britain, about two-thirds came from Austria, Ruthenia, Bulgaria, China, Italy, Austria and Russia Poland, Russia and Finland. The significance of the relatively small percentage of immigration from other than English-speaking countries is apparent. There is no great infusion of deteriorated peoples and unwholesome standards.

Canada maintains immigration agents in all of the principal cities of the United States and Great Britain and in a few foreign countries. A large majority of Canadian immigrants seek the agricultural provinces of the west where they engage in farming and therefore have no direct effect on the industrial life of the Dominion, the supply of labor for manufacturing and the standard of living among factory workers.

According to the census of 1911, there are 19,218 industrial establishments in Canada having a capital of one and one-fourth billion dollars and employing a half million hands. Wages paid out in a single year amounted to about two hundred million dollars or an average of four hundred eighteen dollars a year. Annual wages in fifteen leading occupations obtained by dividing the total wages paid by the number of employees, are herewith given:

Food products, \$275.  
 Textiles, \$367.  
 Iron and steel products, \$530.  
 Timber and lumber and re-manufactures, \$358.  
 Leather and its finished products, \$424.  
 Paper and printing, \$475.  
 Liquors and beverages, \$565.  
 Chemicals and allied products, \$454.  
 Clay, glass and stone products, \$438.  
 Metals and metal products other than steel, \$559.  
 Tobacco and its manufactures, \$379.  
 Vehicles for land transportation, \$546.  
 Vehicles for water transportation, \$528.  
 Miscellaneous industries, \$480.  
 Hand trades, \$464.

The value of manufactured products in a year, now considerably over one and one-half billion dollars, increased two hundred sixteen per cent. from

1890 to 1910. This volume of manufactured products, although small compared with the output of the United States, suggests that Canada may one day have an industrial problem almost as vast and perhaps as complex as that of our own country.

Of the total wage earners in Canada, fifteen and four-tenths per cent. are women, two and eight-tenths per cent. are persons under sixteen and one and seven-tenths per cent. are piece workers. The annual earnings of men for all industrial occupations are about four hundred sixty dollars; of women, two hundred sixty-one dollars; of children under sixteen, one hundred fifty-nine dollars, and of piece workers, three hundred twenty-three dollars.

Canada had about twenty-five thousand miles of railways in 1910 while the United States had about two hundred fifty thousand miles. The field crops from about thirty-three million acres of land under cultivation yielded a return of \$565,711,600 in 1911. Canada has about two hundred million acres of merchantable timber, the pulp industry yielding four and a quarter million dollars in 1911 and all manufactured lumber products, one hundred eighty-five million dollars in 1910. The mineral production rose from seventeen million dollars in 1890 to one

hundred three millions in 1910. Silver, nickel, gold and copper were the leading hard minerals. Coal yielded over twenty-six million dollars in 1911. Structural materials, including cement, lime, granite, limestone, etc., added about twenty-three millions to the mineral production.

There are about twenty-three thousand public schools in Canada with thirty-seven thousand teachers and a million and a quarter pupils maintained at an annual expenditure of about twenty-eight million dollars. The provincial governments have control of education, the funds being supplied by government grants and local taxation. Education is free and more or less compulsory, but the laws are not strictly enforced. Canada has three agricultural colleges and one other college where a department of agriculture is maintained. There is a government experiment station in the province of Saskatchewan.

In 1912, the total Canadian trade amounted to something over eight hundred million dollars. Of the total trade, a little less than one-third was with the British dominion. Of the British trade, Canadian imports amounted to \$137,884,696 and exports to \$170,155,221. Of the foreign trade, Canadian imports amounted to \$409,497,886 and exports to \$145,162,029.



The total public debt of Canada has grown from \$129,743,432 in 1873 to \$508,338,591 in 1912.

These facts go to show the state of industry in Canada and in some measure, at least, reveal the contrast in the scope of industrial development in Canada and the United States. As stated heretofore in the chapters on Australia and New Zealand, the mere bigness of the United States does not foredoom the operation here of a law that works elsewhere but that bigness and other important related factors, bearing on industrial conditions—a mixed and congested population, want of surplus land, monopolistic control of industry and involuntary unemployment due to a variety of causes—are certainly not to be ignored.

But we must not forget that the Canadian act applies only to public utilities. In the United States, joint agreements in force between the railroad managers and the powerful railroad unions and appeal to the federal act have been quite as effective in averting stoppage of work as the disputes investigation act in the Dominion. Some of our severest strikes have occurred on street railways but the chief cause has been recognition of the employees' union. Coal mines, covered by the Canadian act, are another source of much trouble here and it may be

doubted whether any law would prevent a strike like that of 1913-1914 in the Colorado coal mines, where men dared to oppose the state militia in open battle. It seems the inevitable order of things that a contest, such as this, where primary liberties are withheld by industrial barons, must go on until one side is worn out by the struggle.

Lately, there has been one notable strike of the telegraph operators in the United States—that of 1907, involving fifteen thousand men—which might have been averted by timely measures but there have been few strikes involving gas, electric light, water and power plants. No law is much needed for these industries. Our troubles, at present, lie in a different quarter.

The industrial disputes investigation act of Canada was passed in 1907 following a coal strike which threatened a fuel famine in Saskatchewan and Alberta. The law was passed in response to public sentiment which demanded some form of relief.

Under the Canadian act it is unlawful for employees in industries covered by the act to lock out their workmen or for employees to go on a strike until the appointment of an arbitration board and investigation of the causes of the controversy and the filing of the report. This report is made to

the minister of labor, who is charged with the administration of the act, and must set forth "the various proceedings and steps taken by the board for the purpose of fully and carefully ascertaining all the facts and circumstances . . . including the cause of the dispute and the board's recommendation for the settlement of the dispute according to the merits and substantial justice of the case."

After the investigation and report have been made, either party may refuse to accept the findings and institute a strike or lockout.

It is the duty of the board when a dispute has been referred to it to endeavor to bring about a settlement before recommendations are made. To this end, it may do whatever it thinks right and proper for inducing the parties to come to a fair and amicable settlement, and may adjourn proceedings to allow the parties to agree to terms of settlement.

Any employer declaring or causing a lockout contrary to the act is liable to a fine of from one hundred dollars to one thousand dollars for each day that the lockout exists, and any employee who goes on a strike contrary to the act is liable to a fine of not less than ten dollars nor more than fifty dollars for each day that he is on a strike. Inciting, en-

couraging or aiding an employer to continue a lock-out is also punishable by fine.

Parties may agree in advance to be bound by the recommendations of the board, in which case recommendations are made the rule of a court, on application of either party, and enforceable as such. Parties outside the operation of the act may agree to come under it.

Either party to a dispute may make application to the minister of labor for the appointment of a board of conciliation and investigation, but ten persons must be involved. The act applies to companies or corporations employing ten or more persons engaged in mining, transportation by steam, electric railroads or steamships, telegraph, telephone, gas, electric light, water and power business. Within fifteen days after application for the appointment of a board, three members are appointed by the minister of labor, one each on recommendation of each party and one, the chairman, upon recommendation of the other two.

Disputes coming under the act may involve wages, hours of employment, sex, age or qualification of employees, the employment of children, materials, customs and usage, and interpretation of agreements.

Application for conciliation and investigation must set forth the names of the parties to the dispute, the nature and cause of the dispute, an estimate of the number of persons affected, and any efforts made by the parties themselves to adjust the dispute. If the application is made by the employees, who are members of a trade union, it must be signed by the officers duly authorized by a majority vote, except where a dispute involves employees in more than one province, it may be signed by the chairman and secretary of the executive committee without a vote. Further, if made by the employees, it must contain a statutory declaration that, failing an adjustment of the dispute, it is the belief of the declarant that a strike or lockout will be called, and that the necessary authority to call a strike has been obtained, which amounts to a majority vote of the membership. Where the dispute affects employees in more than one province, the chairman and secretary of the strike committee may make a statutory declaration of their authority to call a strike in the absence of a majority vote of the membership.

Employers and employees are required to give at least thirty days' notice to the adverse party of intended changes affecting conditions of employ-

ment, with respect to wages and hours. If such proposed change results in a dispute, neither of the parties affected shall alter conditions of employment until the dispute has been finally dealt with by a board.

A majority of the board may make an award; its proceedings are conducted in public, except by special arrangement, and its recommendations are published in the *Labor Gazette*. Members of the board receive twenty dollars a day for each day's services, and the two members first appointed receive five dollars a day for not exceeding three days, during the time they are engaged in selecting a third member.

From March, 1907, to March, 1913, a total of one hundred forty-five disputes were referred under the act. In eighteen cases, the boards were unsuccessful in averting or ending strikes. Of the one hundred forty-five disputes referred, fifty-one occurred in mines, eighty-five in transportation and communication industries, four among civic employees and five in cases other than mines and public utilities.<sup>1</sup>

The Grand Trunk railway strike of 1910 was marked by violence and disorder, resulting in blood-

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<sup>1</sup> *Sixth Report of the Register of Boards of Conciliation and Investigation*, p. 15.

shed, dynamiting and incendiarism. Troops were called out in some places. Through intervention of the government, the strike ceased on August second, having continued from July twelfth. An eighteen per cent. advance in wages was obtained by the strikers.

Nine thousand machinists employed by the Canadian Pacific railroad were on strike during the summer and fall of 1908. Two reports were filed by the official investigators of the government, an instance of the weakness of the act. Experience has shown there is little to be gained from public opinion where there is a divided report of an investigating board.

The most important Canadian strike during 1909 was that of the Alberta coal miners. Three thousand were out from April to August.

Twenty-two disputes were referred under the act during the year ending March 31, 1913. In four cases, boards of conciliation and investigation were unsuccessful in averting strikes. During this year one dispute involved the workers in coal mines, three those in metal mines, nine occurred on railways, five on street railways, one in shipping, one among telephone workers, one among civic employees and one among other than mines and public utilities.

The total number of employees affected by the one hundred forty-five disputes from March 22, 1907, to March 31, 1913, was approximately one hundred eighty-six thousand. During the year 1912-13, a dispute between the Canadian Pacific railway and its telegraphers, growing out of a demand for fifteen per cent. increase in wages, involved directly one thousand eight hundred employees and indirectly affected eight thousand others. The board gave an increase of ten per cent. and when a strike was threatened a compromise was finally reached by which the men received an increase of twelve per cent. The four disputes in which boards of investigation and conciliation were unsuccessful during 1912-13 involved ninety coal handlers employed at Port Arthur, Ontario, where violence occurred; a dispute between the employers of a mining company in British Columbia and its employees, involving three hundred men; a dispute between several mining companies in Ontario and their employees, numbering four hundred sixty-five, and a dispute between the freight handlers, clerks, checkers and other employees of the Canadian Pacific railroad and the company. Of these four disputes, two awards were repudiated by the employers and two awards repudiated by the employees.



Five years' experience under the Canadian act has shown that public opinion is futile to avert a strike, particularly in those cases in which there is a divided report of an investigating board. But the act has proved reasonably successful in averting strikes and lockouts, however great the hardships may have been upon parties affected by it. Trade economists uphold the law because it gives the employer time to fortify himself with strikebreakers and escape penalty contract, pending investigation.<sup>2</sup> Because boards are temporary and therefore inexperienced, honest errors have occurred in several instances.<sup>3</sup> Further objection is made to the act because it is incumbent upon the adverse party to prosecute violations of the statute. The employers want the government to assume the duty of bringing prosecution.<sup>4</sup> The courts have held that a labor organization has no right to make a legal and enforceable contract and this decision has weakened the law. Canadian trade unions had a membership of about one hundred sixty thousand in 1912.

In a report on the industrial disputes investigation act of 1907, Sir George Askwith, K. C. B., chief industrial commissioner of Great Britain, who

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<sup>2</sup> *Bulletin of the Bureau of Labor*, No. 86, p. 18.

<sup>3</sup> *Ibid.*, p. 19.

<sup>4</sup> *Ibid.*, p. 19.

visited Canada during the summer of 1912 to make an official inquiry on behalf of the British government, found the employers "generally favorable to the act, certainly to its principle and policy."

Among the criticisms suggested by employers was one that the recommendations of the boards should be brought fully before the men for their consideration. Other criticisms were that partisans should not be appointed to the boards; that penalties should be enforced by the government; that unions should be incorporated and be responsible for penalties or damages, and that there should be a method of interpretation of recommendations and settlements.

For the five years, 1907-12, one hundred seventeen industrial disputes were reported as having come under the operation of the Canadian act. In the same years, there was a total of one thousand fifty-four strikes in the United Kingdom, an average of more than two hundred a year.

"To bring more than two hundred disputes under the operation of such an act in this country," said the report, "would mean a very extended government department with a large supply of conciliators available to act as members of the boards.

"It will have been gathered from the preceding explanation of the working of the act," the report went on to say, "where it was frankly accepted as a means of preventing disputes, it has worked ex-

tremely well, but where, for reasons, some apparent and others which can only be guessed at, its introduction has been resented, it has not succeeded to the same extent. In such latter cases where, by the imposition of penalties, efforts have been made to enforce the act, the results have not been satisfactory.

"I consider that the forwarding of the spirit and intent of conciliation is the more valuable portion of the Canadian act, and that an act on these lines, even if the restrictive features which aim at delaying stoppage until after inquiry were omitted, would be suitable and practicable in this country," Sir George Askwith said in concluding his report. "Such an act need not necessarily be applied in all cases, but neither ought it be confined to services of public utility. It might be generally valuable in cases where the public were likely to be seriously affected. Without the restrictive features it would give the right, not only to conciliate, but fully to investigate the matters in dispute, with similar powers in regard to witnesses, production of documents and inspection, as are vested in a court of record in civil cases, with a view, if conciliation fails, to recommendations being made as to what are believed to be fair terms.

"Such an act, while not insuring complete absence of strikes and lockouts, would be valuable, in my opinion, alike to the country and to employers and employed."

While the American Federation of Labor is not on record against the compulsory investigation of strikes and lockouts, the Denver convention of 1908

did condemn the Townsend bill which the resolution asserted "purports to be a measure in the direction of compulsory investigation of strikes, but which is really, in effect, the forerunner of compulsory arbitration, with all its evils. . . ."<sup>5</sup>

As late as 1912, the American Federation of Labor had not declared its position on the Canadian industrial disputes investigation act. In the Rochester convention of 1912, however, Fraternal Delegate Tolin W. Bruce, representing the Canadian Trades and Labor Congress, spoke of the law, in an address to the convention.

"When the act was first proposed," Bruce said, "the Trades and Labor Congress favored it, although there were some who realized the seriousness of the proposition and wanted them to go easy in indorsing it. Now we find that after a few years of operation, the act has not worked out to the satisfaction of the wage workers. When an appeal is made to government for an investigation under the act, the law will apply, if you have a strong organization behind you; but if you have a weak organization and are not in a position to enforce your demands, you will find the board is refused. There have been instances where wage workers have been able to get boards under the act, but the employer has not been willing to live up to the award. Even when we find a weak organization of the Canadian element appealing for a board, it is not granted.

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<sup>5</sup> *Proceedings of A. F. L.*, 1907, p. 177.

After an exhaustive hearing of those most directly concerned in the operation of this act, the Congress by a very large vote determined to seek the repeal of the act, or seek a better administration of it. We stated that we were not opposed to arbitration and conciliation, if it were conducted with the intention of arbitrating and conciliating the disputes regardless of the organizations."<sup>6</sup>

The 1909 convention of the Western Federation of Labor and the United Mine Workers both condemned the Canadian law. The U. M. of A. denounced it as an "interference with our right to quit work." The constitution of the Western Federation of Labor forbids all forms of agreements with employers except a wage scale. This organization is strongly Socialistic and the Socialist party is opposed to bolstering up the wage system by "facilitating agreements and preventing strikes."

So far, South Africa presents the only other instance of an attempt to prevent strikes and lockouts before an official investigation and reports on the merits of the controversy. Several thousand government railway employees were on a strike from the middle of April to the middle of May, 1909, in Natal, South Africa. The strikers refused an offer of the government to inquire into their grievances.

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<sup>6</sup> *A. F. L. Proceedings*, 1912, p. 217.

Outside workers were successful in breaking the strike. In the same year the Transvaal Parliament passed an act modeled closely after the Canadian industrial disputes investigation act. A department of labor was created in the colony to aid in the prevention of strikes among employees or lockouts by employers and the settlement of industrial disputes by conciliation after investigation.

The act provides that "no alteration shall be made by any employer in relation to wages, allowances, or other remuneration of his employees or the price to be paid to them in respect to their employment, or to the hours of their work, unless one month's notice at least of the proposed alteration be given to all employees who would be affected thereby," and "no demand shall be made upon any employer by any of his employees to affect, within less than one month, any such alteration."

Lockouts and strikes are illegal until investigated by a board of conciliation and investigation and until one month has elapsed after the report has been made public. A fine of one hundred pounds daily against the employer and, in default of fine, imprisonment not exceeding twelve months, is prescribed for a violation of the act. A fine of from ten pounds to fifty pounds daily or imprisonment

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against employees is prescribed for a violation of the act. Inciting strikes or lockouts is punishable by a fine of from fifty pounds to two hundred fifty pounds or by imprisonment. Ten employees must be affected to make the act operative and application for conciliation and investigation may be made by either party. The other party is bound to reply.

## CHAPTER VIII

### INITIAL EXPERIMENTS AT HOME

**S**TRIKES called by the journeyman bakers of New York in 1741 and by the journeyman shoemakers of Philadelphia in 1796, 1798 and 1799 comprised the most serious industrial troubles in the United States before the beginning of the last century. As compared to the present-day strike, they were unimportant. There was a strike of the New York sailors in 1802 and another strike by the journeyman shoemakers of Philadelphia in 1805. The sailors gave an organized demonstration in the streets which was broken up by constables. The leader of the strike was arrested and punished, just as strike leaders are arrested and sometimes punished to-day for no other offense than resisting the wishes and will of an employer.

Minor strikes by shoemakers, tailors, hatters, workmen in the building trades and unskilled laborers occurred during the subsequent years up to 1835 when, according to a report of the Commissioner



of Labor (1901, p. 721), "strikes had become so numerous as to call forth remonstrant comments from the public press." Several strikes for the ten-hour day occurred between 1830 and 1840. A strike on the Massachusetts railways occurred in 1834 when there were riots which it required the militia to put down. Rioting and destruction of property occurred in the strike of the Philadelphia brickmakers in 1843.

Prior to 1860 there was no well established method for the settlement of industrial disputes in this country. Industrial controversies, however, were frequent, and strikes had become common. The first instance of arbitration in the United States is recorded as having taken place early in the eighteenth century in the copper mines of Connecticut. The first trade agreement ever signed in this country, February 3, 1865, was the result of action taken by the Sons of Vulcan, a trade union newly organized in the iron industry. Another agreement was signed July 23, 1867. Various departments of the iron business were included in trade agreements from time to time, and practically governed wages in the rolling-mills west of the Allegheny Mountains.

It was not until the close of the Civil War when

improved machinery began to displace the old-fashioned shoemaker's shop, and the old-fashioned shoemaker took a new quarter in his master's factory that organization began in the boot and shoe industry. The Knights of St. Crispin was the first of these.

On July 21, 1870, a board of industrial arbitration was established at Lynn, Massachusetts, the center of the shoe manufacturing industry in the United States. The board consisted of five members appointed by the Knights of St. Crispin and five members appointed by the manufacturers. A scale of prices agreed upon within two days was ratified by both parties.

This contract expired in 1872 and the manufacturers spurned all offers of another conference. The employees went out on a strike but gradually returned to work on the manufacturers' terms and the Knights of St. Crispin temporarily passed out of existence as a factor in this industry. The Shoemakers' League was then organized but it proved ineffectual and the Knights of St. Crispin was revived with a board of arbitration which really had no more than conciliatory powers. It was successful, however, in averting open breaches in several hundred cases. In 1878 the manufacturers made a final

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stand against the Knights of St. Crispin, and the organization soon disintegrated.

Meantime had occurred the great strikes of 1877 on the Baltimore and Ohio, Pennsylvania and other railroads which resulted in violence and made necessary the calling of troops. There was a strike on the Gould roads in 1885.

In 1885 a joint board of arbitration, consisting of seven members from district assembly No. 77, Knights of Labor, and seven members representing the manufacturers, was established. Before the new scale became operative the workmen, who had been growing more and more dissatisfied because of the striving for trade autonomy, protested against the continuance of the board. As a consequence of the workmen's threats to withdraw from the Knights of Labor if their wishes were not realized the members of the conference, representing the Knights of Labor, were withdrawn and the wage board came to an end.

The Knights of Labor, now almost extinct, was an industrial organization of which the district assembly was a unit. It did not recognize the principle of trade autonomy but sought to join the workers of all trades together without respect to their particular crafts. It declined rapidly after the organization of

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the American Federation of Labor, which was based on the principle of trade autonomy and a loose federation of national and international trade unions.

Before the rise of the American Federation of Labor, the Knights of Labor was the most powerful labor organization in this country. It was founded upon the principle of industrial unionism, the fundamental idea of the Industrial Workers of the World to-day, rather than trade unionism, which the American Federation adopted and which accounts for its rise and the decline of the Knights of Labor.

But the Knights of Labor demanded "the enactment of laws providing for arbitration between employers and employees and to enforce the decision of the arbitrators."

"It should be the law in every state," said T. V. Powderly, Master Workman of the Knights of Labor, in commenting on the Homestead strike,<sup>1</sup> "that in disputed cases the employer should be obliged to select two arbitrators and the employees two, these four to select a fifth; this arbitration commission to have access to all books, papers and facts bearing on the question at issue from both sides.

"An established board of arbitration, appointed by the governor or other authority," said Powderly, "is simply no board of arbitration at all, for the

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<sup>1</sup> *North American Review*, September, 1892.

reason that the workmen would have no voice in its selection and the other side, having all the money and influence, would be tempted to fix such a board preparatory to engaging in a controversy with working men. For either side to refuse to appoint its arbitrators should be held to be cause for their appointment by the governor of the state.

"No strike or lockout should be entered upon before the decision of the board of arbitrators. Provisions for appeal from the decision of the arbitrators should be made in order to prevent intimidations or money from influencing the board."

A strike in the Brockton factories involving nearly six thousand operatives occurred in the early sixties, about the time the Lynn joint board was established. After some negotiations, a joint board consisting of six members from each side was established, and it was agreed that in case of a tie each side should select a disinterested person and these two a third—the decision of the three to be final. This latter board reached an agreement after the men had been idle for five weeks and they returned to work.

Attempts at arbitration in the anthracite coal fields of Pennsylvania occurred simultaneously with the arbitration at Lynn and Brockton, Massachusetts.

The first law passed in the United States provid-

ing for industrial arbitration was an act of the Maryland legislature of April 1, 1878. It provided only for local arbitration. No permanent agency was established to carry out the provisions of the statute.

A New Jersey law of 1880<sup>2</sup> permitted a majority of employees in any manufacturing establishment to propose to submit any matters in controversy to arbitration. At the option of the employer a second arbitrator might be named by the employer, the two to select a third. A board so constituted had power to hear and examine the case and make a written decision "binding upon both parties."

A later act of 1886<sup>3</sup> provided that a controversy between employers and employees, by mutual consent, might be submitted to a board of five arbitrators, two named by the employees and two by the employer, the four to select a fifth. The decision of such a board was made "binding and conclusive between the parties."

Pennsylvania in 1883 provided for "voluntary trade tribunals." Texas provided for similar boards of five persons by an act of 1895.<sup>4</sup>

Thirty-two states of the union have enacted leg-

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<sup>2</sup> Public Laws of 1880, Ch. 138.

<sup>3</sup> Laws of 1886, p. 315.

<sup>4</sup> Laws of 1894-1895, Ch. 379.

isolation in some form providing for the conciliation and arbitration of industrial disputes. Sixteen of the forty-eight states have done nothing to provide for industrial arbitration. It is noteworthy that eight of the sixteen states are in the South—Virginia, Kentucky, Tennessee, Arkansas, Florida, North Carolina, South Carolina and Mississippi. Oregon, a state that otherwise has been foremost in progressive legislation, is one of the sixteen. The other seven are Delaware, West Virginia, Rhode Island, Arizona, New Mexico, South Dakota and Wyoming.

Four of the thirty-two states, New Jersey, Michigan, Indiana and North Dakota, have repealed<sup>5</sup> their laws on industrial conciliation and arbitration, and no one of these states at present has any law in operation worthy the name of an industrial arbitration statute. Although the constitution of Wyoming, adopted in 1890 when that state entered the Union, gave the state legislature power to establish courts of arbitration from which appeals to the Supreme Court were provided, no action has been taken under the clause.

Legislation for industrial arbitration has taken

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<sup>5</sup> Indiana repealed its original act in 1911, but a new act was passed in 1915. It is discussed on page 258 et seq.

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two distinct forms in this country. One is the permanent state board of arbitration that continues from year to year. The other form is voluntary arbitration by local boards constituted for each dispute as it arises. In some states, labor commissioners are vested with powers similar to those exercised by state boards, yet otherwise are limited by restrictions imposed by laws providing for local arbitration.

The seventeen states having permanent boards and the dates of their creation by statute are as follows: Massachusetts and New York, 1886; Missouri, 1889; California, 1891; Ohio, 1893; Louisiana, 1894; Illinois, Connecticut, Minnesota and Montana, 1895; Utah, 1896; Oklahoma, 1907; Maine, 1909; Alabama, 1911; Vermont, 1912; Nebraska and New Hampshire, 1913.

Pennsylvania, Nevada, Colorado, Idaho, Iowa, Maryland, Texas, Washington and Kansas—nine states—provide for local boards.

Nine of the seventeen states having permanent state boards of arbitration also provide for local and voluntary boards. The nine states are California, Maine, Massachusetts, Alabama, Minnesota, Montana, Nebraska, New York and Ohio.

New York had a detached and independent state



board of arbitration similar to the boards of other states until 1901, when a bureau of mediation and arbitration was created in the department of labor. The state board of mediation and arbitration consists of a chief mediator and two other officers of the department of labor from time to time designated by the commissioner.

The Wisconsin Industrial Commission, created by an act of 1911, is charged with the duty of promoting voluntary arbitration and to do so may appoint temporary boards, prescribe rules of procedure, conduct investigations and hearings. A deputy of the commission is known as chief mediator.

New Jersey, the second state in the union to legislate upon this subject, created a state board of arbitration in 1892 and made provision for local boards under license of the county judge. Appeals from local boards to the state board were allowable and the latter was given the power of mediation but not investigation. An amendment of 1895 named three persons to serve on the state board, fixed their salaries and terms of office.

The act of 1892 and its amendments were repealed in 1908. The present commissioner of labor<sup>\*</sup>

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<sup>\*</sup> Lewis T. Bryant, New Jersey Commissioner of Labor.

is authority for the statement that the board "performed little or no service during the entire time it was in existence."

Michigan first provided for industrial arbitration by a state board in 1889. The board had powers of mediation and investigation at its option but no provision was made for the immediate publication of its findings. In 1903 an amendment made it the duty of the mayor of any city, the supervisor of any township or the president of any village to furnish promptly to the state board information of threatened or actual strikes or lockouts. An amendment of 1909 fixed the salaries of the arbitrators. No appointments were made under the act until 1897 and the statute was repealed by the legislative session of 1911. It is said that the board did not meet with favor for the reason that its powers were used for political purposes and for that reason was abolished.

At the first session of the North Dakota legislature, after the adoption of its constitution, in an act prescribing the duties of the commissioner of agriculture and labor, it was made his duty to mediate between employers and employees when requested to do so by fifteen employees or the em-

ployer in a difference threatening a strike or lock-out involving twenty-five or more workmen.<sup>7</sup>

Until the enactment of the statute of 1915, uncertainty marked the status of the Indiana law with reference to industrial arbitration. The labor commission act was passed in 1897. It provided for the appointment by the governor of two electors, not of the same political party, one representing the employees and one the employers, not less than forty years of age.

It was the duty of this commission upon receiving information "of the existence of any strike, lockout, boycott or other labor complication" in the state involving at least fifty persons, to go to the scene of the complication and offer their services as mediators. Mediation failing, they were required to "endeavor to induce the parties to submit their differences to arbitration," either under the provisions of the act or as they might elect.

The commission and the judge of the circuit court where the controversy arose were constituted the board of arbitration under the act, but two persons,

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<sup>7</sup>This act is not included in the text of state laws published by the Bureau of Labor in 1913, and it does not seem to have been included in the compilation of the North Dakota laws in 1895, 1899 and 1905. However, a careful examination of the North Dakota statutes did not show that it has ever been repealed.

one representing the employers, and one representing the employees, might be added. This board had power to issue subpoenas for witnesses and to hold public or private hearings. A majority of the board might make an award.

Either party violating the award might be punished for contempt, but only in case of "willful and contumacious disobedience" did the punishment extend to imprisonment.

Provision was made under the act, upon application of any employer and twenty-five employees before an open rupture had occurred, for arbitration of their differences by the circuit judge and labor commissioners.

Investigation of facts attending any disagreement was compulsory upon the labor commission in the event mediation failed and the parties could not agree to arbitration. In such investigation, the commission was entitled to the assistance of the attorney general and had full power to issue subpoenas for the attendance of witnesses. Failure of witnesses to attend and testify was punishable by the circuit judge as contempt of court.

Upon the completion of the investigation and report to the governor, the commissioner was required, "unless he shall perceive a good reason to the con-

trary," to authorize such report to be given out for publication. No arbitrator could be paid for more than fifteen days' service under the act. They received ten dollars a day for each day of actual service.

The legislature of 1899 repealed the act of 1897 altogether and passed a new act containing all the provisions of the act of 1897, except that the clause requiring that fifty men be affected as a condition precedent to mediation was stricken out. The members of the commission were given an annual salary under the new act instead of a per diem of ten dollars.

In 1911, the general assembly created the bureau of inspection. Section three of that act attempted to confer the powers held by the old labor commission on the deputy inspector of buildings, factories and workshops, and the deputy inspector of mines and mining. The status of the act was considered too indefinite to permit the arbitration of the Indianapolis street railway strike in 1913 by the two deputy inspectors and the circuit judge of Marion County and this controversy was settled after personal intervention by the governor and formal hearings before the public service commission of Indiana.

A Georgia act, passed in 1911, can hardly be considered within the scope of legislation for industrial

arbitration. The act merely gives the commissioner of labor power to inquire into the causes of strikes and "whenever practicable offer his good offices to the contending parties with a view of bringing about friendly and satisfactory adjustments thereof."

Before 1900, the American Federation of Labor had taken a more or less active stand in political matters having to do with the welfare of its membership. It had, however, before that time successfully resisted the efforts of certain members to commit it to the cause of any particular party.

The seamen's rights bill, approved December 31, 1898, abolished in certain ports "imprisonment for desertion from the vessels," and guaranteed to a seaman "a right to quit work at any time and for any reason sufficient to himself, in any port of the United States." This bill was indorsed by President Gompers and the legislative committee of the American Federation of Labor.<sup>8</sup>

The policy of the American Federation of Labor with regard to compulsory arbitration was formulated by a special committee, of which Edgar A. Perkins, of Indiana,<sup>9</sup> was chairman, at the Louis-

<sup>8</sup> Report of President Gompers, 1901, p. 13 of the proceedings.

<sup>9</sup> Formerly president Indiana State Federation of Labor.

ville convention in 1900. That policy prevails to-day.

The New Zealand law, the Indiana labor commission act of 1898, the Illinois state arbitration law and the Erdman act were severely criticized in the report.<sup>10</sup> "The kernel of this species of 'legislation,'" it said, "is a desire to prevent strikes by punishing the striker." Industrial courts of France were put in the same class as the compulsory arbitration boards of New Zealand.<sup>11</sup> A bill introduced in the German Reichstag about this time was said to have "the same underlying motive."<sup>12</sup> A law adopted by the Hungarian Diet, providing "that agricultural workers must make agreements for specific terms of service" and that "any violation of the agreement shall subject the offending party to imprisonment,"<sup>13</sup> was denounced as one designed "to prevent strikes by punishing the striker." The Swedish law "extending the master and servant laws of Sweden to the industrial workers of that country" was "fiercely combated by the lovers of liberty," said the report.<sup>14</sup> Objections were made to the Illinois law and the Indiana law then in force,

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<sup>10</sup> *Proceedings of the A. F. L. Convention, 1900*, p. 143.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

because they permitted the judge for the violation of an award, to punish the offender for contempt of court. "The thought underlying these laws," said the report, "is that the individual may alienate his right to liberty, and it is, therefore, destructive of the fundamental principle of the Republic of the United States."<sup>15</sup> Trade unionists point to the English "statute of laborers" as the forerunner of compulsory arbitration, and this statute was pronounced, by the special committee of the American Federation of Labor, "every bit as fair as the New Zealand, Indiana or Illinois laws."

Taking up the constitutional prohibition of involuntary servitude, the committee was not disposed to consider this prohibition applicable to the "involuntary servitude," resultant from the "so-called voluntary arbitration laws," in view of the decision of the United States Supreme Court in *Robertson et al. vs. Harry Baldwin*, decided January 25, 1897, and from which Justice Harlan dissented. The holding of the court was quoted thus:

"An individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another, during the continuancy of the contract; not

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<sup>15</sup> Ibid.



that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed involuntary.

"Commissions, with power to examine and report," the statement concludes, "would seem to be more in line with what is actually desired, but we would call attention to the fact that even these have in them a feature dangerous to liberty, because from them may come—and sometimes do come—reports which have a tendency to warp public opinion and prepare it for measures which without such preparation the public would unhesitatingly reject.

" . . . we are utterly opposed to any law enacted by the state which will in any way<sup>16</sup> *by consent or otherwise*, deprive the worker of his right to quit work at any time and for any reason sufficient to himself."

Max S. Hayes, the well-known Socialist representing the Cleveland Central Labor Union, was secretary of this committee.

The Industrial Workers of the World are opposed to arbitration in every form. The preamble of their declaration of principles recites that "the working class and the employing class have nothing in common" and their platform demands the "abolition of the wage system."

The Socialist party is regarded as unfavorable to arbitration of any kind, since it interferes with the sympathetic strike. It was the Socialist influence in

<sup>16</sup> *Proceedings of the A. F. L. Convention, 1900*, pp. 145-146.

the Western Federation of Miners which forbade that organization to agree with their employers upon anything more than a wage scale.

Employers' organizations, as a rule, are not kindly disposed to arbitration, and certainly not favorable to compulsory arbitration. Generally, their contention is that they have a right to employ whom they will, when they will, under whatever conditions they desire, and pay what the supply and demand of labor compels them to pay.

In its declaration of labor principles, however, the National Association of Manufacturers asserts that it is "not opposed to organizations of labor as such," and that "no person should be refused employment or in any way discriminated against on account of membership or non-membership in any labor organization, and there should be no discrimination against or interference with any employee who is not a member of a labor organization by the members of such organizations.

"With due regard to contractors," the declaration asserts, "it is the right of the employee to leave his employment when he sees fit, and it is the right of the employer to discharge any employee when he sees fit.

"The National Association of Manufacturers disapproves absolutely of strikes and lockouts, and fa-

vors an equitable adjustment of all differences between employers and employees by any amicable method that will preserve the rights of both parties.

"Employees have the right to contract for their services in a collective capacity, but any contract that contains a stipulation that employment should be denied to men not parties to the contract is an invasion of the constitutional rights of the American working man, is against the public policy, and is in violation of the conspiracy laws. This Association declares its unalterable antagonism to the closed shop, and insists that the doors of no industry be closed against American workmen because of their membership or non-membership in any labor organization."

The National Civic Federation, an organization which was formed as the result of several conferences on arbitration and conciliation under the auspices of the Chicago Civic Federation, has promoted by various means, the movement for industrial peace. This organization has an executive committee of fifteen members each from Labor, Capital and the general public. It has a department of conciliation and arbitration and a membership extending to every industrial center, composed of representatives of the capitalists, wage earners and general public in equal numbers.

"The National Civic Federation aims to bring into cooperation the sane and patriotic leaders of the forces of employers and employed and of the inter-

ested but too often forgotten and forgetting third party, the general public; its purpose is constructive, not destructive. It would develop, through agencies here described, the best elements in the organizations of capital and labor, and it would keep awake a wholesome public concern in the profit of one, the welfare of the other and the prosperity of all, through the advent of an intelligent understanding of economic laws. It would show that organized labor can not be destroyed without the debasement of the masses. It would show that organized labor can be led to correct its errors. It would show that capital can be taught the practicability of securing industrial peace in accordance with business methods. It would show that the twin foes of industrial peace are the anti-union employers and the Socialists, and that the former are unconsciously promoting that class hatred which the latter boldly advocate. It would present a hopeful picture of future harmony between capital and labor, based upon the establishment of their rightful relations, instead of the pessimistic prophecy of the degradation of labor because of its exceptional and inexcusable errors or crimes, or of a social revolution provoked by capital when organized for oppression."<sup>17</sup>

In 1903, because some members of the National Association of Manufacturers were unwilling to allow the major portion of its attention to be devoted to fighting organized labor, the Citizens' Industrial Association was organized.<sup>18</sup> This is a national or-

<sup>17</sup> Bliss, *The Encyclopedia of Social Reform*, p. 807.

<sup>18</sup> Carlton, *The History and Problems of Organized Labor*, p. 89.

ganization, made up of district and local associations. There are about five hundred of the latter in most of the states and territories. A few years ago, the British Citizens' Industrial Association, modeled after the American institution, was organized.

The Citizens' Industrial Association of the United States is bitterly hostile to organized labor, although the contention is sometimes made that it is not. James A. Emery, one of the moving spirits in the National Association of Manufacturers, is a leader in the Citizens' Industrial Association. The late James W. Van Cleave was also prominent in both. They have been numbered among the best known foes of organized labor in this country. The late C. W. Post also was a moving spirit in the Citizens' Industrial Association. A monthly magazine, *The Square Deal*, publishes this platform of principles:

"No closed shop; no restriction as to the use of tools, machinery, or material, except such as are unsafe; no limitation of output; no restriction as to the number of apprentices and helpers, when of proper age; no boycott; no sympathetic strike; no sacrifice of independent workmen to the labor union; no compulsory use of union label."

Although this organization does not set forth its

attitude regarding conciliation and arbitration, it can hardly be expected to be favorable to any industrial scheme which involves collective bargaining. It stands for an industrial autocracy and therefore savors of medievalism. While it recognizes the right of Capital to organize, with the greatest non-chalance it denies the same right to Labor.

The platform declarations of political parties on industrial arbitration have not been more explicit than platform declarations usually are. The Socialist party is opposed to compulsory arbitration, in fact arbitration of almost any kind, if not by official declarations against it, then assuredly by its constructive program of industrialism as opposed to capitalism. The Prohibition party, as far back as 1888, declared that "arbitration is the Christian, wise and economic method of settling national differences and the same method should by judicious legislation, be applied to the settlement of disputes between large bodies of employers and their employees."<sup>10</sup>

This is typical of later planks on the subject. No party has outlined any particular form of arbitration. No party has said much about what kind of arbitration it favored, at least in national platforms.

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<sup>10</sup> Pro. Nat. Plat., 1888.

Both the Republican and Democratic parties, in their platform of 1896, declared in favor of arbitration to adjust the differences between employer and employee engaged in interstate commerce. The Democratic party had a plank in 1900 favoring "arbitration as a means of settling disputes between corporations and their employees" and the Republican party in 1912 favored the "speedy enactment of laws to provide that seamen shall not be compelled to endure involuntary servitude." In 1908 and in 1910, the Indiana Democratic state platform contained declarations favoring compulsory arbitration.

## CHAPTER IX

### LEGISLATION IN UNITED STATES

**I**N ALL of the seventeen states having permanent state boards of conciliation and arbitration, except Louisiana and Oklahoma, there are three members. Louisiana has five members and Oklahoma six. New York's board is made up from officials of the department of labor. Generally, board members are appointed by the governor, though in Oklahoma three members are recommended by the state commission of labor, and in most states at least one member must be a representative employer and one member a representative employee. Illinois also requires one member to be taken from each of the two leading political parties.

The third member of a permanent state board of arbitration, generally speaking, is required to be a disinterested citizen. Minnesota, Missouri, California and Utah require that the third member shall be neither an employer nor an employee. In some states the member representing the employees must be recommended by a labor organization.



Members hold their office for four years in one state, three years in seven states, two years in six states, one year in one state and indefinitely in two states, Louisiana and New York. Salaries vary from three dollars a day in Montana to eight dollars a day in New Hampshire and one thousand five hundred dollars and two thousand five hundred dollars a year in Illinois and Massachusetts, respectively.

Of the nine states having state boards of arbitration but providing also for local and voluntary boards, California has made it possible when the parties to any controversy or difference do not desire to submit their difference to a state board "they may by agreement each choose one person, and the two shall choose a third, who shall be chairman and umpire, and the three shall constitute a board of arbitration and conciliation for the special controversy submitted to it and for that purpose shall have the same powers as the state board." They may be sworn and shall adopt such rules of procedure as they may see fit. Local boards are constituted in Maine the same as in California. They are paid by the state.

Massachusetts makes the effect of the decision of the local board dependent upon the terms fixed in the submission. The arbitrators receive three dol-

lars a day from the treasury of the city or town where the controversy arose. A copy of their findings is filed with the state board. Otherwise, a local board is constituted, as in California and Maine.

The Alabama act is practically the same as those of California, Maine and Massachusetts. Local boards are constituted "by agreement of the parties" in Minnesota. They have all the powers of the state board. Montana makes it possible for local boards either to be "mutually agreed upon" or to be selected one by each party and the third by the first two. The jurisdiction of the board is exclusive but it may ask and receive the assistance of the state board. Arbitrators are paid by the county. The time allowed for hearings must not exceed ten days.

In Nebraska, the deputy commissioner of labor is ex-officio secretary of local boards. They have the same powers in particular controversies as the state boards. The New York law is very much the same as the Nebraska act as to local boards, except that one of the members acts as secretary and the law makes no provision for their compensation. Ohio's provision for local boards is identical with that of Minnesota.

Of the nine states where temporary arbitration boards are provided by state law, the labor commis-

sioners are mediators in Idaho and the labor commissioner is mediator in Colorado and Washington. The chief of the bureau of industrial statistics is mediator in Maryland, the commissioner of the bureau of labor in Iowa and the governor in Nevada. Pennsylvania has a chief of the bureau of mediation, an official of the department of labor, under an act of 1913. Texas and Kansas do not provide for mediation by state agency.

Failing in conciliation, the governor of Nevada is empowered to appoint temporary arbitration boards. The two labor commissioners and the judge of the district court where the dispute arises constitute the board of arbitration in Idaho. They are required to obtain consent to arbitration in writing. Local boards are chosen, one member by each party, and the third by the two members already chosen, in Colorado, Washington and Maryland. Upon the failure of the two to agree, a third member is appointed by the deputy state labor commissioner in Colorado. If mediation or an effort to obtain arbitration fails in Washington, the state labor commissioner must request reasons for refusal. These reasons must be made public. The chief of the bureau of industrial statistics in Maryland, failing to conciliate the parties or to obtain arbitration, must make

a complete investigation, ascertain which party is mainly responsible or blameworthy, and publish a report in some daily newspaper over his signature.

Aside from the Maryland law of 1878 and the provisions for local boards appointed at the suggestion of the chief of the bureau of industrial statistics, industrial disputes may be settled in Maryland by the voluntary agreement of both parties to abide the determination of a judge or justice of the peace, or the determination of two arbitrators satisfactory to the employers, two satisfactory to the employees, appointed by the judge, and the judge. Such determinations are given as a judgment of the court.

Five persons employed as workmen or two or more separate firms, corporations or individuals employing labor within the county may petition the district court of each county in Kansas to issue a license for the establishment of a tribunal for voluntary arbitration. It is the duty of the court to grant the license and name four persons to compose the tribunal, two workmen and two employers, also fix a time and place for their first meeting. Such tribunal shall continue for one year and "may take jurisdiction of any dispute" submitted to it for decision. Disputes occurring in one county may be referred to a tribunal already created in an adjoining county.

An umpire shall be appointed "to act after disagreement is manifested in the tribunal by failure to agree during three meetings held and full discussion had." His award is final. A majority of the tribunal may provide for the examination and investigation of books. The proper court upon motion of any one interested may enter judgment on the award.

The trade union of which the employees are members or a majority of the employees and the employer, each names two arbitrators and the fifth is chosen by the other four or the district judge in Texas. Upon petition from a legally constituted board, the judge must issue an order approving the board. During arbitration the status existing prior to the disagreement must be maintained. The award of a court of arbitration may be enforced in equity. Judgment is entered on the award within ten days after being filed in the district clerk's office, unless exceptions are made. Appeal is allowed to the court of civil appeals having jurisdiction thereof. The decision of this court is final.

Either or both parties to a dispute, the mayor of the city, the chairman of the board of supervisors of the county, twenty-five citizens joined in a petition

or a commissioner of the bureau of labor, after investigation, may make written application to the governor for the appointment of a board of arbitration and conciliation in Iowa, when at least ten persons are affected.

Upon notice, it is the duty of the governor of Iowa to notify the parties of the application and make request that each within three days recommend five persons "who have no direct interest in such dispute and are willing and ready to act as members of the board, and the governor shall appoint from each list submitted one of such persons recommended." If either party fails or neglects to make a recommendation within the legal period, the governor "shall appoint a fit person who shall be deemed to be appointed on the recommendation of either of said parties." The members so appointed are required, within five days of their appointment, to name one person who is willing and ready to act as a third member of their board. Upon their failure or neglect to do so, the governor shall appoint a third member. If both parties join in an application and agree to be bound by the decision, it shall be binding for one year. The board elects one member chairman and one secretary. It may employ clerks and stenog-

raphers. The members receive five dollars a day. Expenses of arbitration under the act are payable out of the state treasury.

Iowa boards of arbitration and conciliation have full power to subpoena witnesses and examine them under oath. They are required to visit the scene of the controversy and make a personal investigation. Within five days after the completion of the investigation, unless the time is extended for good cause by the governor, boards are required to make a written decision. Provision is made by the act for printing the decision in two newspapers of general circulation in the county where the controversy existed.

State boards of arbitration all have practically the same provisions governing the process of intervention and proceedings subsequent to intervention.

The Massachusetts act may be taken as typical of a group. This state makes it the duty of the mayor of a city, the selectman of a town, the employer or employees actually concerned in a threatened strike or lockout to notify the state board. Maine, Ohio, Oklahoma, Louisiana and Utah have essentially the same requirement except that notice must proceed from different local officials. The chief executive officer of every labor organization affected by a

strike or lockout in Oklahoma is required to inform the board of "such information as he may possess touching the differences or controversy and the number of employees involved." Experience supports this provision inasmuch as state boards may accomplish more toward conciliation if conditions are not permitted to become acute, as they often do from delay. Unless such notice is required, it frequently happens that the board hears nothing of a strike or lockout until some overt act of violence gets into the newspapers. Then it may be too late to bring the hostile parties together.

Says President Hadley of Yale University:<sup>1</sup>

"The history of boards of arbitration shows how little can be accomplished by the exercise of political authority after the fight has once begun."

In its annual report for 1904, the New Jersey state board of arbitration urged that the state law be amended to require the chief executive of the local government to furnish the board with information of strikes and lockouts. This is typical of the experience of all state boards where no one was charged with the duty of giving information promptly. The Indiana Labor Commission in its

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<sup>1</sup> *Report of Industrial Commission*, Vol. 17, p. 692.



report for 1907-08 and the Ohio board in its report for 1906 asked to have local authorities made responsible for giving notice of strikes and lockouts.

It is the board's duty in Massachusetts to obtain an amicable settlement, if possible, or endeavor to persuade the employer and employees to submit their controversy either to a local board of arbitration or to the state board.

If the employer or a majority of the employees or both parties in any controversy involving not less than ten employees apply formally for arbitration, agreeing to continue at work or in business without any strike or lockout until the decision of the board is made, if made within three weeks from the date of the application, it is the duty of the board to proceed at once to a hearing.

The Alabama act is similar to that of Massachusetts regarding the process preliminary to arbitration. Application for conciliation and arbitration may be signed by either or both parties, if twenty men are involved, in Louisiana. The application not only must contain a concise statement of grievances but an agreement to continue at work or in business until the decision of the board is published, if made within ten days from the date of application.

Twenty-five men must be involved in Illinois to

warrant intervention by the state board which is by application of either or both parties. It is the board's duty when a strike or lockout is threatened to "put itself in communication as soon as may be with such employer or employees, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them to submit the matters in dispute to the state board."

The Connecticut act provides for mediation by the board on its own motion. Employers and employees may jointly submit their differences to the state board whereupon an investigation is made and a decision rendered.

California's provisions for arbitration by the state board are identical with those of Massachusetts. If the petitioners fail to keep the promise made to continue at work or in business, the board shall proceed no further in the investigation without the written consent of the adverse party, and the party violating the contract must pay the extra cost.

Application for arbitration to the state board may be made by either party in Minnesota. Notice to the adverse party is necessary unless notice is waived.

Missouri makes it the duty of the employer and the employee to submit for investigation grievances

or disputes to the state board. This duty is defined in the following clause:

"In all cases when any grievances or dispute shall arise between any employer and his employees, said dispute involving ten or more employees, it shall be the duty of the parties to said controversy to submit the same to said board for investigation."

Parties are bound to continue at work or in business in Montana, if the decision of the board is made within four weeks after the date of application. Montana has a provision similar to that of California governing violations of the contract contained in the application for arbitration.

Only by mutual agreement may a grievance or dispute between an employer and employee be submitted to the state board in Nebraska.

The commissioner of labor is mediator in New Hampshire. If he fails to obtain an adjustment of differences, it is his duty to endeavor to have the contending parties submit their differences to the state board of arbitration. As a part of his preliminary investigation, he is required to make a decision as to what ought to be conceded by either or both parties.

The New York board is authorized to make findings after application has been made to it, pre-

sumably from the act, by both parties. The second deputy commissioner of labor is chief mediator. Grievances or disputes may be submitted to the board on agreement in writing to abide by its determination. Voluntary boards may be created for individual cases when each side selects one arbitrator and the two select a third.

Twenty-five employees must be affected as a condition precedent to mediation in Ohio.

Each party may submit a separate list of grievances or they may join in a statement of facts, under the Utah act. Application for arbitration must precede a strike or lockout, or an agreement to resume work or business must be signed if a strike or lockout is under way.

The phraseology of the Vermont statute is almost identical with that of the Massachusetts act, but Vermont has no provision for local boards.

Seven states—Iowa, Idaho, Colorado, Massachusetts, Missouri, Ohio and Vermont—require an investigation by state authority of conditions surrounding actual or threatened strikes and lockouts, even though neither party asks for it. This process is known as compulsory investigation and has many features to commend it to the approval of the practical man seeking a practical remedy. This process

is founded on the idea that public opinion, when apprised of the true state of affairs in a troubled district, will operate for a speedy adjudication by the party most blameworthy. This is the merit of congressional investigations in strikes of national importance and the merit of all investigations, official or unofficial. Investigations are likely to fail when the public has little confidence in the fairness of officials charged with the duty of sifting out the facts.

In 1912 the Massachusetts state board of conciliation and arbitration was called upon to investigate and report conditions after the company had refused to arbitrate the Boston Elevated strike. Evidence brought out by the board showed that the public had been deceived by the company, which first had claimed that there were less than one thousand men on the strike. The company later conceded there were one thousand six hundred and finally admitted that there were two thousand five hundred. The books of the secretary of the street railway men's union showed that three thousand three hundred seventy-two members had received strike benefits. The books also showed that the company was importing strikebreakers contrary to its claim and the findings of the state board showed that officials of the company had induced vicious characters to come

to the city. The demand of the mayor and the governor that the strike be settled forced the company to consent to arbitration and all demands of the union were conceded by the board.

In Iowa, the decision following investigation must be published. Idaho requires an official investigation if, after five days, mediation has failed. The deputy labor commissioner of Colorado must make an investigation of facts if mediation fails and it is a misdemeanor not to furnish sworn statements as to why arbitration is refused. Massachusetts requires the board to ascertain which party is mainly responsible and publish a report of its findings. In formal hearings under the Massachusetts act, all persons interested must be heard or examined by the board and it is its duty to advise the respective parties what ought to be done or submitted to by either or both parties to adjust the controversy. Missouri makes investigation compulsory, if conciliation fails, and also fixes the duty of the parties to submit a controversy to arbitration. Ohio requires an investigation if conciliation fails, advice from the board as to what both parties should do, and publication of findings.

“When a controversy or difference, not involving a question which may be the subject of an action or

proceeding in a court," exists between an employer and his employees, it is the duty of the Ohio board to "visit the locality of the dispute, make careful investigation into the causes thereof, hear all parties interested therein who come or are subpœnaed before it, and advise the respective parties what, if anything, ought to be done or submitted to by either or both such parties to adjust the dispute." A decision must be made public by the board "if it fails to bring about an adjustment of such differences."

Vermont requires the decision to set forth which party is mainly responsible.

Illinois and Oklahoma make an investigation without application from either party optional with the board. When the general public is likely to suffer inconvenience "with respect to food, fuel or light, or the means of communication or transportation, or in any other respect," even though neither party consents to submit the case to arbitration, it is the duty of the Illinois board to proceed on its own motion to an investigation and make a finding "with such recommendations to the parties involved as in its judgment will contribute to a fair and equitable settlement of the differences which constitute the cause of the strike or lockout."

Even though neither party will consent to arbitration in Oklahoma, the board of its own motion may "make an investigation of all facts bearing upon such strike or lockout and make public its findings, with such recommendations to the parties involved as, in its judgment, will contribute to a fair and equitable settlement of the differences."

Under similar conditions the New Hampshire labor commissioner may investigate all the facts surrounding a strike or lockout, fix the responsibility and publish findings.

Of the states not having state boards, Colorado makes it the duty of the deputy state labor commissioner, upon learning of an industrial dispute, to make a careful inquiry and advise the respective parties "what, if anything, ought to be done or submitted to by both, to adjust said disputes."

Investigation is optional with the board of arbitration in Connecticut and Minnesota. In Minnesota, the board may "fix the responsibility" for the continuance of a strike and publish the facts. Investigation is optional with the governor in Alabama and Nebraska and optional with the commissioner of labor in New York.

The board of arbitration may make an investiga-



tion at its option on application of either disputant in California, Maine and Montana. Montana requires the board to make public its decision if an investigation is made. Maine makes it necessary, following an investigation, to advise each party what ought to be done. Louisiana makes an investigation mandatory, if either party applies for arbitration, and the publication of the report as to which party is mainly responsible.

There can be no investigation without a submission of the cause to arbitration under the laws of Kansas, Pennsylvania, Nevada and Texas. These states, it will be remembered, provide for local boards only.

When the state is a stockholder or creditor of any concern threatened or affected by a strike or lockout, the board of works has power at its discretion in Maryland to make an investigation of facts and submit a report to the next general assembly. Investigation is incidental to mediation in Utah. It is the duty of the Washington labor commissioner, when arbitration fails, to request a sworn statement of facts from each party and reasons for not submitting the cause to arbitration.

Section 14 of the Massachusetts act provides for

expert assistance to the state board of conciliation and arbitration. The section is as follows :

“In all controversies between an employer and his employees in which application is made under the provisions of the preceding section, each party may, in writing, nominate fit persons to act in the case as expert assistants to the board and the board may appoint one from among the persons so nominated by each party. Said experts shall be skilled in and conversant with the business or trade concerning which the controversy exists, they shall be sworn by a member of the board to the faithful performance of their official duties and a record of their appointment shall be made in the case. Said experts shall, if required, attend the sessions of the board, and shall, under the direction of the board, obtain and report information concerning the wages paid and the methods and grades of work prevailing in establishments within the Commonwealth similar to that in which the controversy exists, and they may submit to the board at any time before a final decision any facts, advice, arguments or suggestions which they may consider applicable to the case. No decision of said board shall be announced in a case in which said experts have acted without notice to them of a time and place for a final conference on the matters included in the proposed decision. Such experts shall receive from the Commonwealth seven dollars each for every day of actual service and their necessary traveling expenses. The board may appoint such other additional experts as it considers necessary, who shall be qualified in like manner and, under the direction of

the board, shall perform like duties and be paid the same fees as the experts who are nominated by the parties."

Montana also has a provision for expert assistance. The law provides that after notice of hearing has been given, each party may nominate in writing one person and the board may appoint two persons to act "as expert assistants to the board." The two persons so appointed "shall be skilled in and conversant with the business or trade concerning which the dispute has arisen." It is their duty, under the direction of the board, "to obtain and report to the board, information concerning the wages paid, the hours of labor and the methods and grades of work prevailing in manufacturing establishments, or other industries or occupations." Other experts may be appointed by the board.

Vermont provides for expert assistance to the board and the section is the same as the Massachusetts act, except that the compensation of assistants is fixed by the board.

The significance of such a clause is obvious. Rarely are permanent boards of arbitration chosen for their interest in or acquaintance with working conditions. Generally, they are politicians who know no more about scientific methods of attacking

an industrial dispute than they know about attacking scientifically any other economic or social problem. Expert assistants may avoid their natural difficulties on account of ignorance of and want of sympathy with the problem they have in hand.

When application for arbitration is mutual, the award is binding upon both parties in Massachusetts, Minnesota, Missouri, Montana, New Hampshire and New York. The decision of the board of arbitrators is enforceable in the courts of Ohio, where a joint application "may contain a stipulation that a decision of the board under it shall be binding upon the parties to the extent stipulated."

Eight states having state boards of arbitration—Massachusetts, California, Illinois, Maine, Minnesota, Montana, New Hampshire and Vermont—make the decision of the board of arbitration binding on parties who join in the application for six months, or until either party has given the other written notice of his intentions not to be further bound after the expiration of sixty days. California permits the parties to agree upon the period in which the award shall be binding. To enforce the decision in Illinois, a copy is filed with the clerk of the circuit court where the offending party resides and the judge is required to grant a rule against

the party to show cause in ten days why the decision has not been complied with. The judge may punish the offending party for contempt.

Five states having state boards of arbitration—Alabama, Connecticut, Louisiana, Nebraska and Oklahoma—do not have any provision for a binding and enforceable award. In Alabama, the recommendation of the board and its decision must be filed with the governor.

Three states having local boards or provision for the same—Colorado, Washington and Wisconsin—make no provision for a binding and enforceable award.

An agreement for arbitration has the effect of an agreement to abide by and perform the award in Idaho. The agreement, however, is voluntary. The parties must agree to abide by the determination of the board in Pennsylvania, and Ohio permits joint applications to contain a stipulation that the decision of the board under it shall be binding upon the parties to the extent so stipulated, in which case it may be enforced in the court of common pleas as a statutory award. Utah permits applications to contain a promise to abide by the decision of the board.

Decisions made by boards of arbitration date

from the appointment of the board and are binding upon the parties who join in an application for one year, in Iowa.

Decisions are final and binding in Missouri when application for arbitration is mutual and final and binding where either party refuses to agree to arbitrate, unless exceptions are filed with the clerk of the board within five days after the decision is rendered. Missouri punishes violations of the board's decision by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in jail not exceeding six months, or by both fine and imprisonment. Agreements to arbitrate in Texas must stipulate that the award is final and binding unless set aside for error of law. Employees dissatisfied with an award must agree not to quit service until after thirty days' notice. The award is effective one year. It must be filed in the district clerk's office and is operative ten days from filing unless exceptions for matter of law are made, when it is effective after these exceptions are disposed of. Judgment is entered on the award at that time unless appeal is taken to a court of civil appeals, the determination of which is final. Nevada has essentially the same provision as Texas, except that no notice from employees is required.

Awards made by judges or justices of the peace in Maryland are enforceable as a judgment of the court.

The power of boards of arbitration to compel the attendance of witnesses, once uncertain, has been established by numerous decisions of the lower and higher courts.

## CHAPTER X

### SOME DEVICES IN OPERATION

**D**URING the quarter century from 1881 to 1905, there were in the United States nearly thirty-seven thousand strikes, according to the *Twenty-first Annual Report of the Bureau of Labor*,<sup>1</sup> involving one hundred eighty-one thousand establishments, six and three-quarters million strikers and eight and three-quarters million employees thrown out of work. The table on page 248 shows the number of strikes in each state of the union during the quarter-century period.

The report shows eight states each as having had more than one thousand strikes during the period. New York had the largest number, a total of 10,199; Pennsylvania was second with 4,159; Illinois third with 3,624; Massachusetts fourth with 2,774; Ohio fifth with 2,570; New Jersey sixth with 1,507; Indiana seventh with 1,126, and Missouri eighth with 1,004. The prevalence of strikes in the various

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<sup>1</sup> Pp. 18-19.



states of the union has not changed materially since 1905 and these figures may be accepted as fairly indicative of the seat of the greatest industrial unrest at the present time.

Of the eight states reporting more than one thousand strikes, six states—New York, Illinois, Massachusetts, Ohio, New Jersey and Missouri maintained state boards of conciliation and arbitration during the greater part of this period. The New York and Massachusetts boards were created in 1886, the Missouri board in 1889, the New Jersey board in 1892, the Ohio board in 1893 and the Illinois board in 1895. During this entire period Pennsylvania had provision for local arbitration by temporary boards only. Indiana had no legislation until 1897, when a labor commission act was passed.

Some comparisons based on the latest figures obtainable show that the United States has more strikes for a given number of industrial workers than Great Britain, France or Germany. In 1905 there was one strike in the United States for every 5,705 industrial workers (census of 1910). In 1907 there was one strike in Germany for each 6,502 industrial workers. In 1906 there was one strike in France to every 6,990 industrial workers and in 1911 there was in Great Britain one strike

## SOME DEVICES IN OPERATION 241

for every 14,608 industrial workers. By industrial workers are meant all persons engaged in trade and transportation, manufacturing, mining and quarrying, mechanical and commercial pursuits.

Six states of this country maintaining state boards of conciliation and arbitration during the greater part of the quarter century have been and are conspicuously industrial states. Reports from all state boards show the boards in these six states to have been most active during the period and subsequently. Figures taken from annual reports of state boards in five states indicate the success of conciliation and arbitration by state boards for stated periods:

TABLE NO. 11

State	Period	Strikes	Inter- vened	Succes- ful	Unsuc- cessful
Massachusetts ...	1886-1911	4,024	1,893	1,157	462
New York .....	1886-1911	8,265	756	255	501
Ohio .....	1893-1906	784	191	72	81*
Illinois.....	{ 1896-1899 } { 1902-1904 } { 1905-1910 }	121	94	43	36*
Missouri.....	{ 1901-1904 } { 1907-1908 }	61	58	23	35
Total .....		13,255	2,992	1,550	1,115

\*Preliminary action only in remainder.

This table shows a total of more than thirteen thousand strikes in the five states during the stated periods, but there were interventions by state boards

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in less than three thousand strikes or twenty-two per cent. of the total. Of these interventions only one thousand five hundred fifty or fifty-one per cent. were successful in ending strikes.

TABLE NO. 12

SUMMARY OF INTERVENTIONS BY NEW YORK BOARD\*  
Interventions and Settlements Compared with Total Strikes and Lockouts

Period	Total Strikes and Lockouts Reported	Interventions		Settlements	
		Number	Per 100 Strikes and Lockouts	Number	Per 100 Strikes and Lockouts
1886....	350	7	2.0	7	2.0
1887....	520	14	2.7	4	.8
1888....	283	17	6.0	8	2.8
1889....	437	16	3.7	5	1.1
1890....	822	17	2.1	7	.9
1891....	769	7	.9	1	.1
1892....	465	11	2.4	4	.9
1893....	387	10	2.6	4	1.0
1894....	424	18	4.2	12	2.8
1895....	362	27	7.5	7	1.0
1896....	216	17	7.9	4	1.9
1897....	248	30	12.1	16	6.5
1898....	280	19	6.8	11	3.9
1899....	299	31	10.4	17	5.7
1900....	327	33	10.1	12	3.7
1901....	126	17	13.5	6	4.8
1902....	142	32	22.5	12	8.5
1903....	202	28	13.9	8	4.0
1904....	124	8	6.5	3	2.4
1905....	154	10	6.5	6	3.9
1906....	245	20	8.2	6	2.4
1907....	282	54	19.1	17	6.0
1908....	160	68	42.5	16	10.0
1909....	176	77	43.8	19	10.8
1910....	250	92	36.8	22	8.8
1911....	215	76	35.3	21	9.8

\* Annual Report of New York Bureau of Mediation and Arbitration, 1911, p. 461.

More than anything else, these figures show that, viewed in the most favorable light, conciliation and arbitration by state boards has not been satisfactory.

✓ Less than five per cent. of the strikes and lockouts from 1881 to 1905 were settled by arbitration. Conciliation and arbitration by state boards has proved most effective in those states where a great many strikes occur every year and where a state board of conciliation and arbitration is moved by continual unrest to familiarize itself with every phase of the labor question. There is no doubt that the continual activity of a state board has a wholesome influence on both parties to an industrial controversy and tends to create a compromising attitude among employers as well as among wage earners.

For instance, the Massachusetts board, in summing up its work for a quarter of a century said in its report for the year ending December 31, 1910:

“The first years of the board passed in unremitting endeavor to stem a flood of trouble with a system of moral suasion. The counsels of peace gained a respectful hearing and substantial improvements were obtained as experience accumulated. In default of a joint submission to a disinterested tribunal, the parties were persuaded to confer in the presence of the board. Negotiations became the habit which produced a friendly frame of mind. The educative effect upon the rising generation of work-

men can not be overestimated. Strikes were settled; controversies determined and adversaries reconciled; and the agreements thus composing the difficulties suggested the prevention of those that would arise in the future. It was in that way that the trade agreement developed. Friendly inclinations of employer and employee which find expression in such an instrument of good will have been fostered by the board from the beginning."

The report of the Massachusetts Bureau of Statistics of Labor for 1912 shows that a larger number of workmen were involved in strikes than in any other year since 1881, when statistics were first compiled. The strikers numbered over forty-eight thousand, as compared with forty-four thousand in 1894, the next highest year. The total number of

TABLE NO. 13

WORK OF MASSACHUSETTS STATE BOARD OF CONCILIATION AND  
ARBITRATION FOR SEVEN YEARS, 1905-1911\*

Year	Number of Strikes and Lockouts	Number of Employees Involved	Inter- ventions	Settled by Arbi- tration	Settled Mutu- ally or Other- wise	Pend- ing at Close of Year
1905....	201	15,865	72	53	16	3
1906....	213	26,738	93	80	12	1
1907....	236	27,665	139	15	7	15
1908....	98	22,546	155	122	13	20
1909....	183	21,563	104	84	5	15
1910....	243	27,176	208	181	23	4
1911....	222	.....	179	162	13	..

\* Compiled from reports of state board and bureau of statistics.

people thrown out of work as the result of strikes was ninety-five thousand.

The five great strikes were, that of the Lawrence textile workers, against a reduction of wages when the fifty-four-hour law went into effect in January, 1912, and which cost five million dollars; that of the Lowell cotton-mill operatives, for an advance in wages above that determined upon by the mill; that of the New Bedford weavers, for abolition of the grading system; that of the Boston longshoremen, for an increase in wages and that of the Boston street railway employees, for the right to organize.

One of these strikes, the Boston street railway strike, was settled by the state board but largely through the influence of the governor and mayor. The board was powerless to deal with the textile workers' strike just as state boards almost always are when conditions are permitted to become acute. Furthermore, public opinion is far more active when the operation of a public utility is concerned. The people of Boston were intimately concerned with the operation of the street railways because, when cars ceased running in Boston, every citizen was directly affected. Not so with the cotton-mills. The public was only remotely affected, or not at all.

In 1907, there were four serious strikes in New

York in which the state board failed to accomplish anything of consequence. The strike of the long-shoremen of Manhattan and Brooklyn lasted more than a month and was lost by the strikers. Six thousand union painters were on a strike for two and one-half months. Nine hundred drivers of the New York City street cleaning department were on a strike during the last week of June, 1907, but returned to work upon the agreement of Mayor Gaynor to make an investigation. The Yonkers street railway strike was settled by a committee of ministers.

In 1908, there was a bothersome strike of the New York City taxicab drivers and in 1909 a strike of the bakers. The cloak makers' and expressmen's strikes occurred in 1910 as well as the strike at the sugar refineries at Williamsburg.

Although state boards of conciliation and arbitration are generally incapable of dealing with strikes of large proportions—involving thousands of workers scattered over a vast territory—the report of the Missouri board for 1908 expressed an optimistic view:

“Never since its creation has a greater labor trouble occurring in any part of the state, threatening either life or property or both, been brought to the

attention of this board, in which a peaceful settlement has not been effected."

The first Connecticut state board of arbitration, created in 1895, was a pronounced failure, partially because the board construed its power to be limited to intervention only after joint application by employer and employee. Yet Connecticut had more strikes from 1881 to 1905 than any other state except the eight already named. The total number was nine hundred thirty. The board was revived in 1903 and in eight typical years<sup>2</sup> out of forty-six strikes, only four were settled by the state board. Ten were settled independently of the board.

In its 1906 report the board remarked:

"Reviewing the labor situation in the light of three and one-half years' experience of the board as at present constituted, it must be stated that there is not apparent any increased disposition on the part of either employer or employees to submit their differences for adjudication to any outside tribunal whatever. Nor does there appear to be any disposition on the part of either party to call in the aid of representatives of the general public, official or otherwise, in their earlier stages of trouble, when it might be possible to correct misapprehension, allay discontent and so forestall and prevent such violent measures as interruption of work, with consequent injurious result to all concerned. In gen-

<sup>2</sup> 1903, 1904, 1905, 1906, 1907, 1908, 1909 and 1910.



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eral, it is only when one or the other of the parties to a labor dispute feels that it is in danger of losing all for which it is contending that it turns with favoring thought to the resource afforded by mediation or arbitration, in the hope that thereby something may be saved for it, either a material advantage or strategic position."

TABLE NO. 14

STRIKES, ESTABLISHMENTS INVOLVED, STRIKERS, AND EMPLOYEES  
THROWN OUT OF WORK, BY STATES AND GEOGRAPHICAL  
DIVISIONS, 1881 TO 1905

State and Geographical Division	Strikes	Establishments		Strikers		Employees Thrown Out Of Work	
		Number	Average Per Strike	Number	Average Per Strike	Number	Average Per Strike
Alabama .....	296	737	2.5	63,038	213	80,151	271
Arizona .....	15	28	1.9	3,118	208	4,324	288
Arkansas .....	69	175	2.5	10,529	153	11,323	164
California .....	638	3,357	5.3	84,747	133	102,880	161
Colorado .....	378	3,663	9.7	85,382	226	93,435	247
Connecticut ...	930	2,111	2.3	60,468	65	96,310	104
Delaware .....	77	279	3.6	6,632	86	9,832	128
Dist. of Colum.	121	785	6.5	10,525	87	11,437	95
Florida .....	415	1,360	3.3	87,905	212	98,673	238
Georgia .....	263	715	2.7	29,976	114	36,840	140
Idaho .....	21	27	1.3	3,555	169	4,085	195
Illinois .....	3,624	29,176	8.1	895,593	247	1,207,000	333
Indiana .....	1,126	3,533	3.1	160,847	143	222,496	198
Indian Terr...	13	63	4.8	6,625	510	7,603	585
Iowa .....	446	1,706	3.8	70,241	157	79,515	178
Kansas .....	175	477	2.7	28,914	165	36,991	211
Kentucky .....	405	1,345	3.3	63,737	157	69,934	173
Louisiana ....	209	2,098	1.0	82,008	392	87,901	421
Maine .....	238	431	1.8	24,132	101	42,407	178
Maryland .....	384	1,565	4.1	64,563	168	75,962	198
Massachusetts .	2,774	10,099	3.6	353,436	127	520,827	188
Michigan .....	637	2,409	3.8	98,067	154	135,784	213

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State and Geo- graphical Division	Strikes	Establish- ments		Strikers		Employees Thrown Out Of Work	
		Number	Average Per Strike	Number	Average Per Strike	Number	Average Per Strike
Minnesota ....	535	2,435	4.6	74,441	139	89,105	167
Mississippi ...	32	87	2.7	2,517	79	2,904	93
Missouri .....	1,004	6,496	6.5	152,413	152	177,062	176
Montana .....	132	230	1.7	14,183	107	*19,158	*146
Nebraska .....	109	498	4.6	19,128	175	28,933	265
Nevada .....	4	5	1.3	240	60	242	61
New H'm'sh're	188	283	1.5	13,675	73	31,334	167
New Jersey...	1,507	6,722	4.5	182,924	121	257,840	171
New Mexico...	29	45	1.6	4,154	143	4,764	164
New York....	10,199	51,597	5.1	1,422,778	140	†1,674,290	†164
N. Carolina...	28	49	1.8	4,219	151	5,277	188
North Dakota.	26	34	1.3	2,074	80	2,084	80
Ohio .....	2,570	10,207	4.0	427,720	166	583,931	227
Oklahoma ....	13	34	2.6	782	60	846	65
Oregon .....	77	678	8.8	14,685	191	19,025	247
Pennsylvania	4,159	24,985	6.0	1,690,414	406	2,242,934	539
Rhode Island..	369	1,376	3.7	34,762	94	65,186	177
S. Carolina...	38	101	2.7	3,833	101	4,173	110
South Dakota.	22	40	1.8	1,372	62	1,429	65
Tennessee ....	449	1,239	2.8	61,025	136	72,403	161
Texas .....	322	1,343	4.2	31,557	98	34,967	109
Utah .....	63	248	3.9	5,071	80	6,630	105
Vermont .....	68	490	7.2	10,790	159	12,056	177
Virginia .....	214	667	3.1	32,213	151	45,898	214
Washington ..	214	879	4.1	21,410	100	24,808	116
West Virginia	292	1,128	3.9	100,879	345	126,457	433
Wisconsin ....	799	3,402	4.3	99,224	124	126,400	158
Wyoming .....	41	60	1.5	5,527	135	7,898	193
Total .....	36,757	181,407	4.9	6,728,048	183	†8,703,824	†237
North Atlantic	20,432	98,004	4.8	3,793,379	186	†4,943,184	†242
South Atlantic	1,832	6,649	3.6	340,745	186	414,549	226
North Central.	11,073	60,413	5.5	2,030,034	183	2,690,730	243
South Central.	1,808	7,121	3.9	321,818	178	368,112	204
Western .....	1,612	9,220	5.7	242,072	150	*287,249	*178

\*Not including 1 strike involving 12 establishments not reported.

†Not including 1 strike involving 21 establishments not reported.

‡Not including 2 strikes involving 33 establishments not reported.

TABLE NO. 15

LOCKOUTS, ESTABLISHMENTS INVOLVED, EMPLOYEES LOCKED OUT,  
AND EMPLOYEES THROWN OUT OF WORK, BY STATES AND  
GEOGRAPHICAL DIVISIONS, 1881 TO 1905

State and Geographical Division	Lockouts	Establishments		Employees Locked Out		Employees Thrown Out of Work	
		Number	Av. per Lockout	Number	Av. per Lockout	Number	Av. per Lockout
Alabama .....	7	11	1.6	885	126	887	127
Arizona .....	1	1	1.0	15	15	15	15
Arkansas .....	5	14	2.8	102	20	102	20
California .....	41	241	5.9	7,763	189	8,039	196
Colorado .....	23	63	2.7	3,870	168	4,064	177
Connecticut .....	68	207	3.0	25,382	373	26,156	385
Delaware .....	1	1	1.0	188	188	188	188
Dist. of Columbia	3	41	13.7	252	84	382	127
Florida .....	16	88	5.5	9,958	622	11,865	742
Georgia .....	14	109	7.8	10,192	728	10,199	729
Idaho .....	1	6	6.0	3,000	3,000	3,000	3,000
Illinois .....	141	4,555	32.3	188,849	1,339	218,285	1,548
Indiana .....	53	233	4.4	4,373	83	4,630	87
Indian Territory..	1	39	39.0	732	732	732	732
Iowa .....	23	131	5.7	2,788	121	3,328	145
Kansas .....	5	9	1.8	2,516	503	5,103	1,021
Kentucky .....	20	31	1.6	1,612	81	2,046	102
Louisiana .....	5	29	5.8	1,286	257	1,596	319
Maine .....	11	86	7.8	6,951	632	6,968	633
Maryland .....	17	62	3.6	2,061	121	2,606	153
Massachusetts ...	128	825	6.4	40,113	313	42,298	330
Michigan .....	44	241	5.5	7,047	160	8,543	194
Minnesota .....	33	155	4.7	2,276	69	3,682	112
Missouri .....	40	103	2.6	5,508	138	5,544	139
Montana .....	7	24	3.4	1,164	166	1,695	242
Nebraska .....	7	90	12.9	2,821	403	2,921	417
New Hampshire..	7	45	6.4	1,504	215	2,121	303
New Jersey.....	55	946	17.2	20,397	371	21,741	395
New Mexico.....	1	1	1.0	200	200	200	200
New York.....	326	6,422	19.7	222,853	684	269,415	826
North Carolina...	3	21	7.0	1,252	417	1,402	467
North Dakota....	3	3	1.0	15	5	15	5
Ohio .....	110	386	3.5	23,876	217	25,922	236
Oklahoma .....	2	27	13.5	409	205	409	205

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State and Geographical Division	Lockouts	Establishments		Employees Locked Out		Employees Thrown Out of Work	
		Number	Av. per Lockout	Number	Av. per Lockout	Number	Av. per Lockout
Oregon .....	4	81	20.3	1,020	255	1,020	255
Pennsylvania ....	164	2,276	13.9	70,543	430	84,374	514
Rhode Island....	8	66	8.3	13,377	1,672	13,377	1,672
South Carolina...	3	18	6.0	837	279	837	279
South Dakota....	2	2	1.0	73	37	73	37
Tennessee .....	28	37	1.3	2,096	75	2,138	76
Texas .....	19	132	6.9	1,821	96	2,026	107
Utah .....	3	12	4.0	329	110	345	115
Vermont .....	5	394	78.8	8,058	1,612	8,073	1,615
Virginia .....	23	51	2.2	4,322	188	4,408	192
Washington .....	16	112	7.0	1,770	111	1,785	112
West Virginia....	12	19	1.6	4,125	344	4,910	409
Wisconsin .....	35	99	2.8	5,319	152	5,814	166
Wyoming .....	2	2	1.0	331	166	331	166
Total .....	1,546	18,547	12.0	716,231	463	825,610	534
North Atlantic...	772	11,267	14.6	409,178	530	474,523	615
South Atlantic...	92	410	4.5	33,187	361	36,797	400
North Central....	496	6,007	12.1	245,461	495	283,860	572
South Central....	87	320	3.7	8,943	103	9,936	114
Western .....	99	543	5.5	19,462	197	20,494	207

The statute establishing a state board of arbitration in California in 1891 was not indorsed by the California labor organizations.<sup>a</sup> It was passed by the efforts of the state labor commissioners and undertook to "create a new institution rather than to embody or regulate what already existed as the natural outgrowth of actual experiences, and, as is

<sup>a</sup> Eaves, *A History of California Labor Legislation*, 1910, p. 379.

often the case with such theoretical legislation, it has failed to meet the actual social need for which it was designed."

The Federated Trade Councils of San Francisco opposed a bill similar to the New York statute on the grounds that the political obligations incurred by the governor would prevent him from appointing arbitrators entirely unbiased with regard to labor disputes; labor commissioners with balance of power might be susceptible to corrupt influence; no way was open to enforce the decisions of the board; and the provision requiring both parties to wait three weeks for a decision of the board would result disastrously to working men, as it would enable the employer to arm himself for a strike if one were called.<sup>4</sup>

As passed, the law provided for a board of three members, the third being a disinterested person. Only two trivial controversies were settled the first year and in its first annual report the board announced that "arbitration as a means of settling differences between employers and employees, and preventing, to some extent, strikes and lockouts, is almost impossible under the provisions of the pres-

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<sup>4</sup> Ibid.

ent laws." The board had no power of conciliation and no power to examine witnesses under oath. Amendments to the act were urged.

In the second and last report of the board, published in 1894, the board said that although there had been difficulties in which their mediation might have been beneficial, they had not been called upon to settle any controversies and had nothing to report. There were six hundred thirty-eight strikes and forty-one lockouts in California from 1881 to 1905.

Following the San Francisco teamsters' strike in 1901, agitation for a more effective law was revived and Governor Gage, in his second biennial message, urged the passage of a law adding the governor and labor commissioners to the board. He believed public opinion would force disputants to refer disputes to the board, whose decision should be binding.

The arbitration law is still in effect but no use is being made of it. A bill for a new act was introduced in 1907, but was vigorously opposed by organized labor and failed to make any progress.

There is a group of four states, Louisiana, Minnesota, Montana and Utah, where practically nothing

has been accomplished by state boards of conciliation and arbitration although the boards were created many years ago.

The Louisiana board was created in 1894, the Minnesota board in 1895, the Montana board in 1887 and the Utah board in 1896.

Generally speaking, the boards have failed to accomplish anything in these states partially because, with one exception, Minnesota, industrial disturbances have been rare and there has been no opportunity to build up a permanent machinery for adjudicating strikes and lockouts. There was an average of about six strikes and lockouts a year each in Louisiana, Montana and Utah for the period from 1881 to 1905. Minnesota had five hundred thirty-five strikes and thirty-three lockouts for the twenty-five-year period, but after one decision by the Minnesota board, created in 1895, and unsatisfactory to both parties, no appointments were made under the act until 1901. The switchmen's strike of 1910 was submitted to the Minnesota board but it accomplished nothing toward a settlement. Governor Johnson intervened in the strike of the dockmen, employed on Lake Superior, in 1907 and brought about a settlement, as well as a settlement in the strike of ten thousand mine workers the same

year. The Montana act has always been a dead letter and the Utah board, established in 1896, never made a report. In the last half dozen years, it has been called together but once and then its services were refused by the contending parties. The Louisiana board disbanded shortly after its creation and nothing has ever been accomplished under the act.

There is another group of four states where conciliation and arbitration laws, once in force, have been repealed: Michigan, New Jersey, North Dakota and Indiana. Although Michigan created a state board in 1899, no appointments were made under the act until 1897 and this statute was repealed in 1911, because the board became an instrument for the convenience of partisan politicians rather than an agency for industrial peace. State boards of arbitration have failed frequently because they are made up of partisan politicians who have in mind the attainment of some political advantage to the party they represent rather than an unselfish spirit of fairness and a desire to do the specific thing they are charged with doing—devise a plan of settlement that will be acceptable to both parties.

"We all know that, as at present constituted, they have proven far from satisfactory as a means of dealing effectively with labor disputes," said a trade



union leader several years ago.<sup>5</sup> "Almost invariably, they savor more or less, in their complexion, of partisan politics, and do not possess the complete confidence of either one or the other factor in industry. As a result, they are very rarely appealed to by the two parties interested in a dispute."

In his *Methods of Industry*<sup>6</sup> Gillman expresses the opinion that if state boards "were better paid, made up of abler men, and entirely free from politics, they might do much more, but on the whole they are not taken seriously by the public or by the disputors. Where they have accomplished the most their accomplishments seem slight by the side of what is desirable in the way of preventing labor troubles."

The New Jersey acts of 1880 and 1886 still remain but they provide only for local arbitration through private agencies and have been altogether futile. The New Jersey act of 1892, by which a state board of arbitration was created, with its amendments of 1895, was repealed in 1908, largely for the reason that in the latter years the board did not accomplish anything. In 1904, the board of-

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<sup>5</sup> Martin Fox, president of the Iron Moulders' Union, before Industrial Conciliation Conference of National Civic Federation.

<sup>6</sup> P. 345.

ferred its services in "more than 150 disputes,"<sup>7</sup> but none of the labor disagreements of that year was arbitrated by it.

According to the report of 1905, "in a number of instances where strikes or lockouts were threatened in New Jersey, the services of the state board of arbitration were proffered. . . . but the good offices of the board were declined, as has been the case of late years."<sup>8</sup>

Nothing was accomplished under the North Dakota act of 1890, which made it the duty of the commissioner of agriculture and labor to mediate in industrial disputes when requested to do so by the parties to the controversy, but North Dakota is and has always been an agricultural state where there are very few industrial controversies. In twenty-five years from 1881 to 1905 there were only twenty-six strikes and but three lockouts in the state.

The Indiana Labor Commission, in existence from 1897 to 1911, enjoyed considerable success in the adjudication of industrial disputes. In six typical years,<sup>9</sup> there were one hundred seven strikes and lockouts in which the board intervened. It was suc-

<sup>7</sup> *Annual Report of the State Board of Arbitration*, p. 5.

<sup>8</sup> *Report of the State Board of Arbitration*, 1905, p. 5.

<sup>9</sup> 1897, 1898, 1899, 1900, 1907 and 1908.

cessful in the settlement of seventy-two and failed in twenty-four cases. Eleven strikes were settled independently of the commission.

"The most formidable obstacles to settlements have not generally come from either the employer or employee, but more frequently from intermeddling third persons," the commission said in its first biennial report.<sup>10</sup> "Of these, the first are demagogical politicians, who either pose as the 'friend' of 'oppressed labor' and proffer sympathy and advice in the hope of being able to secure support in their political aspirations; or seek to gain for their political party some temporary advantage by espousing one or the other side of a labor trouble. Mostly their proneness is to appeal to baser sentiments and by playing on the irascibility of excited strikers gain a temporary prominence which they hope to turn to selfish gain.

"The second are the superserviceable labor agitators, whose zealous and often honest efforts are excited in trying to promote legitimate ends by unwise counsels. Usually their sympathy is genuine and their motives commendable but they are at no pains to inform themselves of the facts which are essential to an accurate knowledge and mature judgments.<sup>11</sup>

"The importation of working men (otherwise strikebreakers) in large numbers to take the place of home workmen," is noted by the commission. "The imported men were of the lowest grade intellectually and morally and were armed to the teeth

<sup>10</sup> Report of 1897-98, pp. 7-8.

<sup>11</sup> Report of 1897-98, p. 10.

by the company importing them," says the report.<sup>12</sup> "It may well be doubted," the report continues, "if this importation can be justified under any circumstances, and the evil results which might grow out of such an act greatly overbalance any possible good which could be realized. Prohibitive legislation on this subject seems imperative."

The report for the years 1909-10 was the last ever made since the labor commission was abolished by the so-called bureau of inspection act of 1911. The repeal of the act was effected largely through the influence of the Indiana State Federation of Labor, which, at its Lafayette convention in 1910,<sup>13</sup> declared in favor of the consolidation of several minor state departments, including that of the bureau of statistics, factory inspection, and the labor commission, into a department of labor. The resulting act of 1911, however, was but a partial realization of the expressed demand of the State Federation of Labor. Conciliation and arbitration were overlooked almost altogether in the new act.

In 1915, Indiana passed a new law providing for the appointment of temporary boards by the governor. Since it can not be supposed that arbitrators so named will use much above the standard of hack

<sup>12</sup> Ibid., p. 11.

<sup>13</sup> *Official Proceedings of the 26th Annual Convention of the Indiana State Federation of Labor*, p. 34.

politicians, the law is valueless. Temporary boards should be constituted by the parties themselves, since either side is able to repudiate an arbitration board appointed by political authority, and will, if displeased with its personnel. The theory of the Indiana law, if any theory was thought of by its framers, is untenable.

Finally, of the states where conciliation and arbitration by state boards has been tried there are six states in the union where boards have been created recently and where little data is available to indicate the success or failure of the scheme. These states are Oklahoma, New Hampshire, Alabama, Maine, Nebraska and Vermont.

The Oklahoma act of 1907 was pronounced "perfectly satisfactory" by the commissioner of labor. "The department has been successful," he says, "in adjusting all labor disputes without the necessity of the board," and "about the only trouble we find in the operation of the act is that we never are advised of any trouble until after the men are out on strike." The act, however, makes it mandatory on different parties interested and the justice of the peace to notify the board of impending trouble.

Under the New Hampshire act of 1911 the commissioner of labor is mediator in industrial disputes.

## SOME DEVICES IN OPERATION 261

From the passage of the act to April 1, 1914, the commissioner of labor was called upon fourteen times to use his offices. Twelve cases were settled peacefully and one case was pending on April 1, 1914. The state board of arbitration was called upon in one case to fix the price for piece work in a certain operation in a shoe factory.

The Alabama act was passed in 1911, three years after a disastrous strike in the coal mines of that state in which several persons were killed. The Vermont act was passed in 1912, three years after a strike of five thousand granite workers at Barre. No meeting of the Nebraska board, created in 1913, had been held up to April 1, 1914. There was a strike of the Omaha street railway employees in 1909.

Very little has ever been accomplished under the conciliation and arbitration laws of those states providing for local arbitration through temporary boards. These states are Maryland, Pennsylvania, Texas, Washington, Colorado, Iowa, Kansas, Nevada and Idaho.

The most glaring objection to this system, perhaps, is the lack of any one officially charged with the duty of bringing employer and employee together for conciliation or arbitration. Also, in the

absence of an official mediator at the outset of a controversy, the time for conciliation or arbitration passes quickly because hostility increases as the strike or lockout is prolonged.

Pennsylvania is the one state, where local arbitration has prevailed, that had more than five hundred strikes and lockouts during the period from 1881 to 1905. Labor conditions in Pennsylvania are perhaps the most complex of any state in the union due to the medley of foreign-born workers engaged in the iron and steel mills and coal mines.

Very little was ever accomplished under the voluntary trade tribunals act of Pennsylvania of 1883, nor a subsequent act passed in 1893, according to the Pennsylvania commissioner of labor. A chief of the Pennsylvania Bureau of Industrial Statistics had "no knowledge of any effort to make use of the act of 1893" in that state. Two serious strikes occurred in Pennsylvania in 1909, that of seven thousand shirt-waist workers in Philadelphia and of five thousand unskilled employees of the Pressed Steel Car Company at McKeesport. The latter was one of the most dramatic strikes of the year. A majority of the strikers were foreigners and many could not speak English. They were without the leadership of a trade union. The strike lasted eight weeks.

## SOME DEVICES IN OPERATION 263

An investigation by the Department of Commerce and Labor revealed a startling condition of intimidation by company officials. The strikers obtained important concessions, including a material advance in wages. The Philadelphia street railway strike began at election time and continued until the following year. The Philadelphia Central Labor Union ordered a general strike and about sixty thousand men responded to the call. The strike was lost. A strike of the Westmoreland County coal miners, which began in March, 1910, and which involved seventeen thousand men, lasted until July, 1911.

The mediation bureau of the Pennsylvania Department of Labor, created in 1913, within a few months was instrumental in settling a great many strikes directly and indirectly, bringing the parties together for settlement, as well as preventing a number of strikes through mediation which might otherwise have materialized, according to the Pennsylvania commissioner of labor in 1914. The department has been instrumental in saving many thousands of dollars in the adjustment of labor troubles since it was organized. But the department has been organized less than three years and that is too soon to record much of a showing; still, the media-



tion bureau has been of incalculable service, saving to the state many times its cost of maintenance.

While there were numerous strikes in Maryland, Texas, Colorado and Iowa during the period the number does not compare with that in those states where state boards were active from 1881 to 1905. Washington had on an average of less than ten a year, Kansas seven, Idaho less than one and Nevada only four for the entire period.

The Maryland act of 1878, according to the chief of the Maryland Bureau of Industrial Statistics, has "never been availed of."

Five years after the Texas law of 1895 was passed, neither the commissioner of agriculture nor the attorney general had any knowledge that the law was in force.<sup>14</sup> A Texas commissioner of labor statistics was "not aware of any case where the act of 1895 providing for boards of arbitration has ever been invoked in any controversy between the employers and the employees in that state."

"We have no knowledge of any law being passed in this state regarding industrial arbitration," a Washington commissioner of labor said in response to an inquiry as to the success of the Washington act of 1903.

<sup>14</sup>*Bulletin of The Bureau of Labor* No. 60, in *House Documents*, Vol. 31, p. 607.

## SOME DEVICES IN OPERATION 265

Colorado first provided for industrial arbitration in 1887. This act was superseded by the act of 1897, creating a state board of arbitration, which was repealed in 1909, "because of its proving ineffective," according to a deputy state labor commissioner. A new act of 1909 created the office of deputy labor commissioner with powers of mediation and the formation of local boards on consent of both parties. The new law has not proved effective. The deputy labor commissioner is "a firm believer in compulsory arbitration." The Colorado coal strike of 1913-1914 was the most disastrous to life and property ever known in that state, and probably attracted wider attention than any other in the entire history of this country.

Only one attempt at adjustment has been made under the Iowa act to 1913, that being the case of the Oskaloosa Light and Traction Company against the Amalgamated Association of Street and Electric Railway Employees. Two judges and a business man were the arbitrators and decided all points in favor of the men, with the exception of that of wages, which was to be submitted to further arbitration. "The company has thus far refused to carry out the decision," according to the Iowa commissioner of labor.

The Kansas commissioner of labor is authority for the statement that the act of 1886 has "never been made use of in any dispute which has arisen since its enactment." Nevada's conciliation and arbitration act was passed subsequent to the 1907 strike at Goldfield, when federal troops were called out and after the legislature had been called into special session.

Idaho copied the Massachusetts act in 1897 and in 1901 substituted the Indiana act of 1897, with minor changes.

Wisconsin's state board of arbitration, created in 1895, was superseded by the industrial commission in 1911. In a dispute between the Milwaukee Electric Railway and Light Company and the Amalgamated Association of Street and Electric Railway Employees, the commission defined its powers under the act of 1911 to include that of conducting investigations and hearings and publishing reports of their findings in threatened or existing strikes and lockouts. The company objected to the examination of its pay-rolls for the purpose of a public finding, but was forced to accede to the demands of the commission when informed that it was the intention of the commission to use the pay-rolls for the express purpose indicated. Finally, after a thor-

ough investigation, the recommendations of the commission were published, but not until the wages of the trainmen had been substantially advanced.

Only the pay-rolls and the records of the company relating to trainmen were examined by the industrial commission. The company refused to submit other records. Discussing the attitude of the company, the commission says it is "of the opinion that it has full authority to make investigation and by subpoena compel the submission of the books of the company to the commission for such purpose, as to all of its employees." At some future time convenient to the commission, it proposed to complete the investigation so as to cover all employees of the company.

Between 1895 and 1904, while Wisconsin had a state board of arbitration, there were one hundred ninety-five strikes in that state, of which number ninety-five were acted upon by the board. Of the ninety-five cases acted upon, there was preliminary work done in twelve cases. The board was successful in the settlement of forty disputes and failed in the settlement of forty-three. In other words, it settled forty-two per cent. of the cases where it intervened and failed in fifty-eight per cent. of these cases.

## CHAPTER XI

### INTERSTATE STRIKES

CONSTITUTIONAL limitations have prevented the federal government from legally doing more than "regulating" the instrumentalities and agents of interstate commerce in the matter of industrial arbitration. Federal legislation on the subject is confined practically to three congressional acts providing for arbitration between interstate carriers and their employees. These acts were passed in 1888, 1898 and 1913.

There was a congressional committee which investigated the Homestead strike at Homestead, Pennsylvania, in 1892, and a commission, authorized under the act of 1888, which reported to the president on the Pullman strike at Chicago, November 14, 1894, but the latter investigation did not begin until the strike was ended.<sup>1</sup> Likewise, there was the Anthracite Coal Strike Commission of 1902, appointed by President Roosevelt, but this

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<sup>1</sup> *Bulletin of Bureau of Labor* No. 60, in *House Documents*, Vol. 81, p. 573.

commission gave an award that, although it was accepted by both sides, was not legally binding.

The Industrial Commission of 1901 made a thorough investigation of strikes and lockouts and of arbitration as a means of averting controversies between employees and employers. In 1912, Congress created the Industrial Relations Commission, charged with broad powers among which are those of inquiring into the "general condition of labor in the principal industries of the United States;" into the "existing relations between employers and employees; into the effect of industrial conditions on the public welfare and into the rights and powers of the community to deal therewith;" also of inquiring "into the growth of associations of employers and wage earners and the effect of such associations upon the relations between employers and employees; into the extent and results of methods of collective bargaining; into any methods which have been tried in any state or in foreign countries for maintaining mutually satisfactory relations between employees and employers; into methods for avoiding or adjusting labor disputes through peaceful and conciliatory mediation and negotiations." During the summer of 1914, the commission held a series of hearings on conciliation and arbitration.

The work of this commission has been spectacular in the extreme but none the less effective. Because its chairman is a man not only of invincible courage but of almost uncanny understanding of industrial and economic principles and conditions, the Industrial Relations Commission has turned out to be the most irrepressible agency for publicity ever devised in this country. The most spectacular thing it has done was to lay bare the shams of the Rockefeller Foundation, a gigantic creation of the elder Rockefeller which had the impudence to begin a nationwide investigation of industrial conditions as a masque for inhuman conditions in the Rockefeller coal mines of Colorado.

In a special message to Congress dated April 22, 1886, President Cleveland urged that "something must be done under Federal authority to prevent the disturbances which so often arise from disputes between employers and the employed, and which at times seriously threaten the business interests of the country."<sup>2</sup>

"In my opinion," said President Cleveland, "the proper theory upon which to proceed is that of voluntary arbitration as a means of settling these difficulties."<sup>3</sup>

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<sup>2</sup> Message, April 22, 1886.

<sup>3</sup> Ibid.

"I suggest," said the president, "that instead of arbitrators chosen in the heat of conflicting claims and after each dispute shall arise for the purpose of determining the same, there be created a Commission of Labor consisting of three members who shall be regular officers of the government, charged among other duties with the consideration and settlement, when possible, of all controversies between labor and capital.

"A commission thus organized would have the advantage of being a stable body, and its members as they gained experience would constantly improve in their ability to deal intelligently and usefully with the questions which might be submitted to them. If arbitrators are chosen for temporary service as each case or dispute arises, experience and familiarity with much that is involved in the question will be lacking, extreme partisanship and bias will be the qualifications sought on either side and frequent complaints of unfairness and partiality will be inevitable. The imposition upon a Federal Court of a duty so foreign to the judicial function as the selection of an arbitrator in such cases, is at least doubtful propriety."<sup>4</sup>

In speaking of the probable consequences of the failure of an arbitration board to enforce its decisions through lack of power, President Cleveland thought much encouragement was derived from the "conceded good" accomplished by state railroad

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<sup>4</sup> Ibid.



commissions, having "little more than advisory powers."<sup>5</sup>

A bureau of labor had been created in July 1884 and President Cleveland believed a commission could "be engrafted upon the Bureau thus already organized by the addition of two more commissioners and by supplementing the duties now imposed upon by such powers and functions, as would permit the commissioners to act as arbitrators, when necessary between Labor and Capital, under such limitations and upon such occasions as should be deemed proper and useful."<sup>6</sup>

"Power," he said, "should also be distinctly conferred upon this Bureau to investigate the causes of all disputes as they occur, whether submitted for arbitration or not, so that information may always be at hand to aid legislation on the subject when necessary and desirable."<sup>7</sup>

One bill providing for the arbitration of disputes between interstate carriers and their employees was introduced in the Senate and three in the House in the first session of the Forty-ninth Congress. The House Committee on Labor also presented a bill as a substitute for that introduced by Representative

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

O'Neill, of Missouri.<sup>8</sup> This bill passed the House and was debated in the Senate. In the second session of the Forty-ninth Congress the same bill passed the Senate but it reached the president on March 1, 1887, only a few days before adjournment. It did not meet the wishes of President Cleveland and did not receive his signature.<sup>9</sup> The president desired a measure that would permit the government to take the initiative in conciliation and arbitration.<sup>10</sup>

Senator John Sherman, in the debate on this bill, February 28, 1887, argued in favor of a commission of two senators, three representatives and seven members from civil life appointed by the president with power to make a broad and liberal examination "similar to those which have been authorized by the British Parliament."<sup>11</sup> An amendment to this effect, however, was withdrawn in order not to defeat the bill already pending for passage.

One bill was introduced in the Senate during the first session of the Fiftieth Congress. Representative O'Neill, of Missouri, presented another bill also, similar to the one he had previously presented. It

<sup>8</sup> 49th Congress, 1st session (see index).

<sup>9</sup> 49th Congress, 2nd session (see index).

<sup>10</sup> *Bulletin of Bureau of Labor* No. 60, in *House Documents*, Vol. 81, p. 571.

<sup>11</sup> *Congressional Record*, Senate, Feb. 28, 1887.

provided that in case of a dispute between an interstate carrier and employees a board of arbitration might be appointed on application of one party to the other, if the second party agreed to a board, the two arbitrators to choose a third. The board had power under the bill to subpoena witnesses, to compel their attendance and make a finding of facts. There was no provision to make the decision or award binding.<sup>12</sup>

Another provision of the bill gave the president power to appoint two disinterested citizens, one of whom was required to be a resident of the state where the controversy arose, who, together with the commissioner of labor, should constitute a commission to make a full investigation and report on disputes involving an interstate carrier and its employees. The services of this commission might be tendered the parties upon application of either or by the president on his own motion. There were no provisions for formal hearings. This bill passed both houses of Congress and was signed by President Cleveland October 1, 1888. The only opposition it encountered was from a few members of both bodies who were inclined to favor a "compulsory"

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<sup>12</sup> *Congressional Record*, House and Senate 50th Congress, 1st session (see index).

clause making arbitration necessary and awards binding.<sup>13</sup>

Four years after the passage of the arbitration law of 1888, the famous strike of the steel workers at Homestead, Pennsylvania, occurred, and a congressional investigation committee made an examination of the causes surrounding the strike and the condition of employment in the Carnegie mills at that place. There was a demand for federal legislation, looking toward the settlement of such controversies.

In a magazine article,<sup>14</sup> discussing the Homestead strike, and arbitration generally, Representative William C. Oates, chairman of the Congressional Investigation Committee, said:

"Congress, therefore, has no power to interfere by legislation in the labor troubles at Homestead nor in any similar ones which may subsequently occur there or elsewhere. A voluntary arbitration law was passed by Congress applicable to railroad strikes and there is one in Pennsylvania applicable to her own affairs but neither of them is of practical utility. Parties will not have recourse to that method of settlement and there is no way to enforce the award when rendered. Nor is a compulsory arbitration law practicable. Such a law could only be enacted by the State and compulsory arbi-

<sup>13</sup> 50th Congress, 1st session (see index).

<sup>14</sup> *North American Review*, September, 1892.

tration would be no arbitration at all since it would at once be the exercise of judicial power. Courts can afford remedies for violated contracts but in a case like that at Homestead where the parties failed to agree—where they failed to make a contract—if the State could invest a tribunal with authority to step in and say that the proposition of the Carnegie Company was reasonable and that the striking workmen should accept and go to work thus making for them a contract which they refused to make and the workmen did not choose to obey the award, how could it be enforced?

“No legislative authority can deprive any man of the right to contract in respect to his own private property or labor and without his consent confer that power upon another person or tribunal. His discretion and personal right can not be thus taken from him for that would at once destroy his freedom.

“The rights of property and personal liberty are secured by fundamental laws of the State and Nation just as they were by the English Common Law and Magna Charta which the old barons, sword in hand, wrested from King John at Runnymede.”

Two years after the Homestead strike occurred the disastrous strike at Pullman, Illinois, sometimes known as the American Railway Union strike. It was called in sympathy with the workers at Pullman, and began June twenty-sixth and ended July thirteenth.<sup>15</sup> On July twenty-sixth, President

<sup>15</sup> *Bulletin of Bureau of Labor* No. 60, in *House Documents*, Vol. 81, p. 573.

Cleveland appointed three commissioners<sup>16</sup> to examine the "causes of the controversy, the conditions accompanying, and the best means for adjusting it." Sessions were held principally at Chicago.

The states were urged to adopt some system of conciliation and arbitration like that employed by the Massachusetts state board and to make illegal all contracts requiring employees, as a condition of employment, to agree to leave or not to join labor organizations.<sup>17</sup>

Employers were urged to recognize labor organizations and the reciprocal relations of employer and employed and voluntarily to consider the interests of Labor as well as those of Capital.<sup>18</sup>

It was further recommended by the commission that there should be a permanent tribunal always ready to deal with railroad disputes; that such a tribunal should have power to intervene on its own motion as well as upon request of parties to the dispute; that it should aim first at conciliation, but where that failed should investigate and fix respon-

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<sup>16</sup> Carroll D. Wright, U. S. Commissioner of Labor; John D. Kernan, of New York, and Nicholas E. Worthington, of Illinois.

<sup>17</sup> *Bulletin of Bureau of Labor* No. 60, in *House Documents*, Vol. 81, p. 573.

<sup>18</sup> *Ibid.*

sibility for the dispute in a published report for the guidance of public sentiment.

This commission recommended also that during the pendency of a proceeding before the permanent tribunal, a strike or lockout should be unlawful and for six months after a decision had been rendered it should be unlawful for the railroad to discharge workmen in whose places others were to be employed, except for inefficiency, violation of law, or neglect of duty, and for said employees to quit the service without thirty days' notice or for a union to order or counsel otherwise.<sup>19</sup>

Amendments to existing statutes to require that national trade unions should provide in their articles of incorporation, and in their constitutions, rules and by-laws that a member should forfeit all his rights and privileges as such for participating in or instigating force or violence against persons or property during strikes or lockouts, or from seeking to prevent others from working by violence, threats or intimidation were recommended by the Pullman Investigating Commission.<sup>20</sup>

Bills were before Congress at every session after this report was filed until 1898 when a new act was

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<sup>19</sup> Ibid., p. 574.

<sup>20</sup> Ibid.

passed superseding that of 1888. The new law provided only for arbitration and conciliation and not investigation and publicity as under the act of 1888.

The act of 1898 provided that the chairman of the Interstate Commerce Commission and the commissioner of labor should, upon request of either party to a dispute involving steam railroads, attempt mediation and conciliation and if unsuccessful to attempt to obtain arbitration. This act made it possible to submit such a controversy to an arbitration board consisting of one member selected by the commissioner, one selected by the employees and one selected by the other two. If the two were unable to agree, the act made it the duty of the chairman of the Interstate Commerce Commission and the commissioner of labor together to name a third arbitrator.

The board so chosen was required to begin a hearing within ten days after the appointment of a third arbitrator and to make a finding and award within thirty days after the appointment of the third arbitrator. The status prior to the beginning of the controversy had to be maintained but no employee could be compelled to render personal service without his consent. A majority of the board could make a valid and binding award which had the





effect of a bill of exceptions and was required to be filed with the clerk of the United States Circuit Court in the district where the controversy arose. It was final and conclusive unless set aside for apparent error. Judgment on the award was entered in ten days in the absence of any appeal. Judgment was entered otherwise when the exceptions were disposed of or when the appeal to the United States Circuit Court of Appeals was disposed of. The injunction or other legal process could be issued to compel the performance of personal labor by any laborer but no employee could quit the service of his employer, if dissatisfied with the award, without giving thirty days' notice, and no employer could dismiss any employee without giving thirty days' notice. The award was effective for one year. It was not binding upon individual employees, not members of the labor organization agreeing to arbitration.

The act provided for forfeiture of membership in a corporation for engaging in violence during a boycott, strike or lockout and made it a misdemeanor with a penalty of a fine of from one hundred dollars to one thousand dollars to discriminate against the members of a labor union or organize a boycott.

In no instance did employers or employees ever

attempt to make use of the act of 1888 but the act of 1898 was more successful.

During the first eight and one-half years of its operation only one attempt was made to utilize the provisions of the Erdman<sup>21</sup> act. This attempt, made within a year after its passage, involved an effort of conductors and brakemen in switching service at Pittsburgh to secure an increase in wages, change in working conditions and a reduction of hours. Eight roads were involved. The companies refused to arbitrate under the Erdman act but granted an increase in wages after the men had voted to strike.<sup>22</sup>

The second case under the act was a dispute between the Southern Pacific Railway and locomotive firemen on the line between El Paso and New Orleans in 1906. This case was settled by arbitration.<sup>23</sup>

From 1906 to 1911 the act was invoked in about fifty controversies and about one hundred sixty thousand employees and five hundred thousand miles of road were involved.<sup>24</sup> One appeal to the courts, allowed by the act of 1898, was taken, but the litiga-

<sup>21</sup> So called from its author, Rep. Erdman, of Pennsylvania, although he was not a member of the Congress which passed the act.

<sup>22</sup> *Bulletin of Bureau of Labor* No. 98, Vol. 24, pp. 29-42.

<sup>23</sup> *Ibid.*, pp. 42-43.

<sup>24</sup> *Ibid.*, pp. 1-2.

tion was dragged along until an agreement finally was reached by direct negotiations. Mediation proved far more successful under the Erdman act than arbitration, the latter having been invoked directly but four times during the entire period the statute was in force.<sup>25</sup>

In three cases only was mediation refused under the Erdman act. In all disputes where mediation was accepted, except one, there was an amicable settlement. This strike was ordered before mediators were called in.

In 1911, nearly thirty-three thousand locomotive engineers threatened to strike but the difficulty was adjusted through the intercession of Commissioner Neill, under the Erdman act. Wages were advanced a little more than ten per cent. and four million dollars were added to the annual pay-roll of the railroads. Differences with the railroad trainmen and the railway conductors were settled with a ten per cent. advance in wages for seventy-five thousand conductors and trainmen on fifty-one western roads.

The engineers on fifty-two eastern roads voted to strike in January, 1912, but Commissioners Neill and Knapp intervened and obtained an agreement to arbitrate under the Erdman act. The award,

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<sup>25</sup> Ibid., p. 29.

which was given in November, granted an increase in pay but not what was asked. It urged the compulsory adjustment of disputes on public utilities by states or a national wage commission. The representative of the engineers on the board refused to sign the award because of this recommendation.

Conclusions of the Industrial Commission of 1901 which made an exhaustive study of strikes and lockouts are interesting. Arbitration and conciliation laws were found "effective for purpose of conciliation," but according to the commission, "the strict arbitration machinery rarely functions well."

"The arbitration laws now existing, particularly the national act of 1898, should be made clear," said the Industrial Commission, "so that the parties to the arbitration, whether employer or employee, should appear as lawfully constituted associations or corporations, or otherwise as individuals with proper machinery for representation by their leaders; and the Commission believe that whoever inaugurates a lockout or strike without first petitioning for arbitration, or assenting to it when offered, should be subjected to an appropriate penalty. The object of the first recommendation is to get responsible parties to the record, and to make sure that the individuals concerned in the difficulty are lawfully represented in the proceedings; and the object of the second recommendation is to encourage peaceable adjustments of differences and to discourage the resort to strikes or lockouts until legal methods have been tried. The

statute should not confine arbitration to a public board, but should permit the parties to choose arbitrators if they prefer. There should be no provision to compel either side to abide by the decision. It is believed that a full and fair investigation of the facts will, in most cases, bring the parties into substantial agreement, while in other cases the result may be safely left to public opinion."

On October 16, 1902, President Roosevelt appointed the Anthracite Coal Strike Commission after the strike had lasted from May 12, 1902, and had cost fifty million dollars. Mine owners and miners agreed in advance to abide by its decision. The miners went back to work and a thorough investigation was made. The report was filed March 18, 1903. A ten per cent. increase in wages was granted. Various other matters, including employment of check weighmen and distribution of mine cars, were settled, and a method of conciliation provided to determine questions on the interpretation of the award. Strikes and lockouts were forbidden during the term of the award. The right to discharge employees without reference to the board of conciliation remained with the employer. The right to discharge without sufficient cause was very unfavorable to the miners. An open shop was granted but no person could be discriminated against because of member-

ship in a labor union. The award was effective for a period of three years. The report urged that the president be given authority to appoint a commission for compulsory investigation whenever a labor controversy arose to threaten interstate commerce—amounting to a revival of a section of the act of 1888, but not included in the act of 1898.

The anthracite conciliation board brought about three successive agreements of three years each, the last expiring April 1, 1912. During the first three years, the board dealt with one hundred forty-five grievances and from 1906 to 1912 with forty-eight grievances. Altogether twenty-five cases were referred to an umpire, who was a federal judge, from 1902 to 1912.

Early in 1912, the anthracite miners demanded a twenty per cent. increase in wages. There was some rioting before a settlement was effected when a ten per cent. increase in wages and a grievance committee were allowed. Because the sliding scale was abolished the increase amounted to a net gain of five and one-half per cent. An immediate increase of twenty-five cents a ton in the price of coal netted the operators about five million dollars above the increase in wages the first year.

In 1913, a new arbitration act was passed super-

seding the act of 1898. It likewise exempted street railways. It provides for a board of mediation and conciliation consisting of a commissioner of mediation and conciliation appointed by the president for a seven-year term and two other officials of the government, who have been appointed by the president. The commissioner of mediation and conciliation receives a salary of seven thousand five hundred dollars a year. He has an assistant, appointed by the president, with a salary of five thousand dollars a year. Either party to a controversy involving the transit of interstate commodities may apply to this board for an amicable settlement of difficulties. Where an interruption of traffic is imminent the board may offer its services to the respective parties. If a board of three members is agreed upon, each party selects one and the two select a third or in their failure to agree, the third member is designated by the commissioner of mediation and conciliation. If six members are agreed upon, each party selects two and the four select the other two by a majority vote. In their failure to agree the remaining member or members may be designated by the commissioner of mediation and conciliation. The agreement to arbitrate shall stipulate that a majority of the board shall be competent to make a valid and

binding award. The parties may ask the reconvening of the board in the event disputes arise after the award which are not settled by it.

Lately, Congress has made investigations of the Lawrence textile workers' strike, the West Virginia and Colorado coal miners' strikes and the Calumet copper mine strike. The evidence adduced in each case disclosed unspeakable conditions of labor but aside from creating a hostile public sentiment against the owners and operators of these enterprises, nothing resulted from the legally-unwarranted interference of Congress. No legal power to intervene in such strikes is vested in Congress.



## CHAPTER XII

### THE COLORADO COAL STRIKE

**T**HE Colorado coal strike of 1913 and 1914 was merely another effort on the part of the miners to obtain for themselves a consideration of grievances, long standing in the history of the coal-mining industry. Strikes have taken place in the Colorado field, roughly speaking in ten-year periods, ever since 1876. The miners lost the strike of 1876 and obtained a satisfactory adjustment in 1884. Ten years later an adjustment was obtained with at least one company, but there was a failure in the case of the Colorado Fuel and Iron Company.

The 1903 strike was abandoned after eleven months and after a failure to obtain recognition of practically the same grievances advanced after the 1912 organizing campaign of the United Mine Workers in the Colorado field. The 1913 strike was called by the Trinidad convention to take place in the event the operators declined to accept a conference. As a matter of fact, it was perfectly well

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known that the operators would not accept a conference, so the date for the strike was fixed by the Trinidad convention.

Specifically, the miners made the following demands:

1. Recognition of the United Mine Workers' Union.
2. An increase of wages.
3. Eight-hour day.
4. Checkweighmen.
5. The right to trade at other than company stores.
6. Enforcement of various state laws.
7. Abolition of the guard system.

There were other grievances, among which were persecution of union organizers and men, discrimination against union men, political domination by the operators, employment of foreigners, failure of accident prevention and want of compensation for accidents, which were considered only in the aftermath of the strike. As a matter of fact, there was one principal grievance to which all others were secondary. This grievance was the failure of the miners to obtain from the operators consideration of grievances generally through committees of the United Mine Workers of America.

Merely because the Colorado strike may be re-

garded as typical of strikes generally, or at least of those strikes where industrial warfare is accompanied by violence, it is discussed somewhat at length. The investigations of the Industrial Relations Commission have established certain facts which might otherwise continue to be subjects of controversy. The testimony before the commission has removed certain important phases of the strike beyond the realm of controversy.

Negotiations for a settlement of the differences between mine owners and mine workers never got beyond the question of recognizing the mine workers' organization because the operators refused to meet representatives of the United Mine Workers, formally or informally, although repeatedly requested to do so. The operators were obdurate despite the fact that officials of the United Mine Workers agreed at one stage to yield recognition altogether if the operators would only meet them informally in the governor's office. Of course, representatives of the miners hoped ultimately for recognition.

Here, then, was the basic difference in the Colorado strike. The operators knew well enough that to meet representatives of the United Mine Workers, under whatever agreement or understanding, would

be tantamount to recognition. If the coal operators were justified at all in refusing recognition, they undoubtedly were justified in refusing to take any preliminary steps in that direction. It may be said without any reservation of the Colorado strike that the refusal of the mine owners to meet the representatives of the strikers prevented a settlement, just as it has prevented settlements in the past and as it will prevent settlements in the future. Strikes that encounter this difficulty must go on until one side is exhausted. Had the country been face to face with a fuel famine, public sentiment might have forced the operators to treat with any group of men capable of ordering a resumption of work. Again and again, public sentiment has forced transportation companies to resume operations when their only means of resumption was to accept the grievance committee of a national union. This compelling factor was lacking in the Colorado strike.

During the period of the strike when various agencies, official and unofficial, were seeking a basis of settlement, the operators sought to emphasize the lawless character of the United Mine Workers. Very probably this organization is no worse than the men who make up the great body of coal miners in the United States. If the organization is law-

less, it is because the coal miners as a class of people are lawless. Yet with how much justice can the operators be heard to complain of this fact? One of the grievances of the 1903 strike was that the operators were importing foreigners from southern Europe and displacing the English-speaking miners. The military commission assigned to report on the Ludlow massacre laid the remote cause of the battle to the "coal operators, who established in an American industrial community a numerous class of ignorant, lawless and savage South-European peasants." In another place, it said: "The tent colony is almost wholly foreign and without conception of our government. A large percentage are unassimilable aliens, to whom liberty means license. . . ." Senator Patterson testified before the commission that it had been the deliberate policy of the company to fill up mines with foreigners of different nationalities; to get men employed who would be quite content to go to work in the morning, work during the length of time the law permits, go to their homes, go to bed, get up and go to work again, without giving any serious thought to the advancement either of their own individual comfort or the advancement of their class.

If the mine owners pursued this policy, about

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which there can be no question, they can not well complain if organization turns these men into savages and brutes who resort to violence to resist further aggressions. The mine workers' organization, the rank and file, consisted principally of those men the companies had brought into the mine district. It is idle to say they were misled by outside agitators. Their leaders were not all residents of the state, but neither were the men who owned the mines.

It is difficult to fix the responsibility for the beginnings of violence in the Colorado strike. Before the militia was called out the civil authorities of Huerfano County had commissioned several hundred men as deputy sheriffs, some of whom were employed by the coal companies and none of whom was subjected to any examination as to character or fitness for service. The sheriff, who was acting in conjunction with the operators, appointed whomsoever they wished. Most of the deputies were paid by the coal companies and were subservient to their wishes. The sheriff of Huerfano County was the political tool of the mine owners and, the proprietor of at least two saloons in the strike district, can scarcely be said to have been a fit man for the office in which he served. The testimony before the In-

dustrial Relations Commission recited many instances of lawlessness on the part of these "deputies."

After the state militia was called out things rapidly grew worse. Of the personnel of the Colorado National Guard, especially its officers, there can be no question. The National Guard was commanded by a man wholly unfit for any responsible service, much less the peculiarly high order of service required in a delicate situation. As one witness testified, "The leaders of the militia considered it necessary to have an enemy and they chose the strikers," probably because they were prejudiced against organized labor. A few of the officers of the militia were brutes. Men and women were arrested in the strike zone without the shadow of a pretext, searched and detained in prison at the will of the military authority. Officers of the United Mine Workers and strike sympathizers suffered like indignities. Private homes, the homes of persons who had no part in the strike, were entered and searched and robberies by militiamen became so common that several culprits were court-martialed and found guilty. Young women were outraged. After the battle of Ludlow, soldiers and mine guards looted the tents of the strikers and burned and destroyed

what they were not able to carry off—clothes, bedding, jewelry, bicycles, tools and utensils.

Can there be any wonder that organized labor is unfriendly to the military arm of the government, especially when it is remembered that the military is used not for police duty, as it ought to be, but as the auxiliary of Capital to break strikes and assist the employer to resist the organization of his employees? With a free labor market it would be next to impossible to win an ordinary strike without either intimidation or violence, both of which are illegal. In the Colorado strike, as in most strikes, the first law breaker was the employer. A Colorado statute makes it illegal to use any form of coercion in preventing workers from joining a permanent organization of working men, yet the law was outraged by the mine owners in a system of espionage maintained by their regularly employed mine guards whose duty it was to spy on the men and report to the officials. It is difficult to see wherein the employer's claim to injury lies when strikers by violating other laws are able by force or a show of force to prevent work at his property.

Judge Ben B. Lindsay testified before the Industrial Relations Commission that in four years in three or four counties of Colorado nearly seven hun-



dred little children were made orphans, or fatherless and dependents, because of explosions in coal mines, the greater number of which could have been avoided had ordinary safety appliances been employed. The presiding judge of the third judicial district, including Las Animas County, testified under oath that not a single personal injury case had been brought before him during the entire eleven years he sat on the bench. Most lawyers, it was said, have been afraid to take personal injury cases because of the fear that "the company will blacklist them and be against them politically and every other way."

There can be no serious doubt that the coal companies have been derelict in precautions to prevent accidents. The percentage of persons killed in the Colorado mines is about twice that for the United States as a whole. Operators contend that the hazard is greater in Colorado than in other coal-mining regions because of the peculiar formation of the coal veins, but the testimony of experts does not support the contention. The testimony, however, does show that the larger companies have suffered fewer accidents than the smaller companies and that they have made a more consistent effort to comply with the accident prevention laws. It is a rare instance when

the operating company pays anything to the injured miner or his family. Through control of judicial processes and various means of intimidation, the mine owners are able to escape payment of damages in practically every case. The operators themselves have had control of agencies organized for promoting sentiment in behalf of industrial compensation and have thus blocked all progress in this direction. Under non-union conditions miners have refrained from complaints against the perils of the industry because to complain has meant summary dismissal.

Locally, the mine owners have enjoyed a degree of political control which would have done credit to the land barons of medieval ages. At the head of the local machine in Las Animas County, for instance, is the sheriff. But the domination of the mine owners applies more or less to the state as a whole. It applies quite as forcibly and effectively to the courts and to the state legislature. Worst of all, this control has enmeshed the educational system of the state and since the Industrial Relations Commission adjourned its hearings on the Colorado strike, Professor J. H. Brewster, who gave damaging testimony against the operators, has been dropped from the faculty of the University of Colorado in much the same high-handed manner as Professor

Scott Nearing was dropped from the faculty of the University of Pennsylvania.

National party emblems have meant nothing in Las Animas and Huerfano Counties. Political campaigns raise no issues between the Republican and Democratic parties as such. This difference is secondary. The only politics of the mine zone is the politics that preserves or defeats the control of the mine owners. A newspaper publisher in the mine zone, a lawyer and former judge who, it seems, was not in the employ of the coal companies in 1912, bitterly attacked them in a political speech at Lamar. When he testified before the Industrial Relations Commission two years later, having in the meantime been employed by the companies, he stated that the political domination of which he complained in 1912 existed "for some time prior to 1912," the inference being that the conditions of which he formerly complained disappeared about the time he accepted employment from the companies.

As Judge Lindsay said of the Colorado strike, it is a "symptom of national wrong. It is the symptom of national wrong which has broken out in Colorado at one time; in Michigan, West Virginia and Pennsylvania at other times; will continue to

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break out until you go deeply into fundamental questions concerning rights of property and the rights of humanity."

The Chicago street railway strike of 1915 was adjusted quickly because the strikers were well organized and capable of acting as a unit. But the Chicago strike was settled promptly for another reason. A city ordinance passed after the strike began forbade the company to employ inexperienced workmen. Strikebreakers were out of the question. One year of violence in the Colorado strike zone shows conclusively the consequences of lending the military arm of the state to employers for the purpose of breaking strikes. The state owes no duty to employers which requires protection for their armed thugs. Rather it is the duty of the state to keep a strike zone clear of men who are imported as strikebreakers merely, men who are in no sense bona fide workmen.

## CHAPTER XIII

### TRADE AGREEMENTS

**I**N his testimony before the United States Industrial Commission in 1901,<sup>1</sup> Samuel Gompers, president of the American Federation of Labor, made this statement:

“As one who has been intimately and closely connected with the labor movement for more than thirty years—from boyhood—I say to you that I have yet to receive a copy of the constitution of any general organization or local organization of labor which has not the provision that before any strike shall be undertaken, conciliation or arbitration shall be tried; and with nearly twelve thousand local trade unions in the United States, I think this goes far to show that the organizations of labor are desirous of encouraging amicable arrangements of such schedules and conditions of labor as shall tend to peace.”

The American Federation of Labor has made phenomenal growth since 1901 and instead of twelve thousand local unions now consists of twenty-seven thousand. Also, there are one hundred thirteen na-

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<sup>1</sup> *Report of the Commission*, Vol. 17, p. 695-6.

tional and international unions which are affiliated in this federation. The statement made by President Gompers in 1901 very probably is just as true of the twenty-seven thousand local trade unions now as it was of the twelve thousand in that year.

The typographical union is the oldest American national trade union.<sup>2</sup> It was one of the first labor organizations to undertake collective bargaining. As early as the decade from 1830 to 1840 several associations of journeymen printers were formed with the design of maintaining scales of prices.

In 1901, the first arbitration agreement was signed between the International Typographical Union and the Newspaper Publishers' Association. This agreement was renewed in 1902, again in 1907, and still again in 1912. Since the first agreement was drawn up, several amendments have been made to the original draft.

The present agreement, effective May 1, 1912, and expiring April 30, 1917, includes an individual arbitration contract and a code of procedure which express and imply certain guaranties to each party. Members of the American Newspaper Publishers' Association holding individual arbitration contracts

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<sup>2</sup> Hollander & Barnett, *Studies in American Trade Unionism*, p. 15.

are protected against walkouts, strikes or boycotts by members of the union and against any other forms of concerted interference. In the event of a difference between a publisher and a local union, all work must continue without interruption pending proceedings looking to conciliation or arbitration, either local or international, and wages, hours and working conditions prevailing at the time the difference arises shall be preserved unchanged until a final decision of the matter in dispute. Differences that can not be settled by conciliation shall be settled by arbitration.

Differences that arise under a written contract that can not be settled by conciliation shall be referred to local arbitration, if so provided in the contract, and if not so provided, to the chairman of the Special Standing Committee of the American Newspaper Publishers' Association and the president of the International Typographical Union. If they are unable to agree, the dispute must be submitted to the international board of arbitration, which consists of three members of the executive council of the International Typographical Union and three members of the Special Standing Committee of the American Newspaper Publishers' Association. These six men

may call in a seventh and disinterested member of the board. An award of a majority of this board is final.

Differences involving a new scale of wages, hours of labor, renewing or extending a scale, or in respect to a contract, not settled by conciliation, may be referred to a local board of arbitration, consisting of two members to be named by each side, one of whom named by each party shall be free from personal connection with any newspaper or labor union. The chairman, the fifth member of the board who is chosen by the other four, must likewise be a disinterested person. Provision is made in the international agreement for appeal from a local board to the international board.

Aside from the agreement between the International Typographical Union and the American Newspaper Publishers' Association, local branches of the former have in force many contracts in the book and job printing business, all of which provide for arbitration of disputes. Moreover, an agreement is now being negotiated between the International Typographical Union and the United Typothetæ of America, an employers' organization in the book and job branch of the printing business, which,



if successful, will extend the scope of arbitration in the printing business by another notable international agreement.

Some of the early trade agreements in this country already have been referred to in this volume, namely, that of the Sons of Vulcan, in the iron industry and that of the Knights of St. Crispin in the boot and shoe industry. But the first trade board organized with powers similar to the powers of the present trade board was organized in a New York City cigar factory.

The next trade agreement of importance was that of the Builders' Association of New York City and the Bricklayers' Union and Amalgamated German Unions. A board of delegates in all the building trades, except the bricklayers', was provided. There was a division in 1894 and an amalgamation of the two factions in 1902 into the United Board of Building Trades. Through the intercession of the National Civic Federation in 1903 a general arbitration board, composed of representatives from the United Board of Building Trades and the Building Trades Employers' Association, was organized. It consisted of two representatives from each affiliated employers' association and two representatives from each union. There was an executive committee,

composed of six employers and six employees elected from the general arbitration board, to which disputes were first referred by the secretary of the arbitration board, after he had failed in conciliation. Decisions of the executive committee were final unless disapproved by the general arbitration board. Special arbitration boards of four members might be organized and these special boards might appoint an umpire.

Between 1903 and 1909, a total of 2,653 grievances were submitted to the secretary of the general arbitration board, 2,379 by labor unions, 274 by employers' associations. The general secretary adjusted 1,050 of these disputes by conciliatory methods; 1,184 went to arbitration, and of these 226 were abandoned and 50 referred to the trade boards for adjudication.<sup>3</sup> The remainder were disposed of in other ways.

This plan of arbitration expired in 1910, since which time individual trade boards have arbitrated all disputed matters. Under the present method of handling disputes, or since 1910, the aggrieved union presents its complaint to the proper authority as originally provided under the arbitration plan,

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<sup>3</sup> *Report of the New York Bureau of Mediation and Arbitration*, 1908, pp. 290-297.

except that there is now no higher court of appeal. Disputed matters are formally presented and a decision rendered or settlement reached in accordance with standards established or in strict compliance with the jurisdictional code formulated by the now extinct arbitration board. It is to be understood, however, that the arrangement of individual employers' associations and the unions of each craft signing conciliation and arbitration agreements still continues.<sup>4</sup>

The first trade agreement in the iron moulders' industry was signed in 1874 at Cincinnati, fifteen years after the International Iron Moulders' Union was organized. The National Stove Manufacturers' Association was formed in 1872 and out of this grew the Stove Founders' National Defense Association in 1885, launched expressly to fight the moulders' union. A plan for conciliation between the two organizations was agreed upon at a joint conference held at Chicago in 1891 following a disastrous strike at St. Louis a few years previously. This plan provided for a conciliation board of three representatives from the employers and three from the employees. Seven years later the National Founders'

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<sup>4</sup> *Bureau of Labor Statistics, Conciliation and Arbitration in the Building Trades of Greater New York, 1913, p. 9.*

Association entered into a plan for conciliation with the International Moulders' Union under a pact known as the "New York agreement."

During the spring of 1904, the executive committee of the National Founders' Association agreed, at a meeting held in Cincinnati, not to recognize the New York agreement after that date. A little later, the association formally abrogated the agreement despite the protest of the International Moulders' Union, which insisted that since the agreement was duly entered into by the two organizations, it could be abrogated only by joint action. The National Founders' Association, however, adhered to the abrogation of 1904 and the New York agreement has not since been effective.

In July, 1910, a strike of the New York cloak makers began. The strikers demanded a new trade agreement with complete recognition of the cloak and shirt-makers' and International Garment-Makers' Unions. The strikers numbered about seventy-five thousand. Under the agreement, effected at the close of the strike in September, recognition of the union and preference for its members were provided, though the "closed" shop is not maintained. The agreement provided for an arbitration board of three members, board of sanitary control

of seven members and grievance committee of four members. The fifty-four-hour week, nine-hour day, double pay for overtime and a minimum wage scale for time workers were obtained. The cloak and suit industry includes two thousand establishments and represents a capital invested of forty million dollars with a two hundred fifty million dollar output annually.

The bituminous coal miners have worked under a joint conference agreement with the mine operators since 1898. There is an agreement covering practically all the mines in Illinois, Indiana, Ohio and western Pennsylvania and local agreements are in effect in other states. These agreements have not always proved adequate to prevent strikes but there is no doubt they have done very much in that direction.

Since the great coal strike of 1902, the anthracite coal operators have dealt with their employees under the terms of an agreement drafted at that time and since renewed. The National Lithographic Association, the theatrical managers, the brewers, the hatters and the cigar makers have trade agreements with their employees. During the first years of the last decade, the United States Steel Corporation and

the Republic Iron and Steel Company also operated under trade agreements with their employees.

There are five national unions not affiliated with the American Federation of Labor which require efforts at conciliation before a strike may be called. Four of these are railroad organizations—the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, the Brotherhood of Railway Trainmen and the Order of Railway Conductors. There is a scheme known as “system federation” by which these organizations act in concert when controversies arise between the carriers and the employees. The provisions of one of these, the Brotherhood of Locomotive Firemen and Enginemen, is typical of the procedure necessary before a strike may be called.

District protective boards consisting of the members of the executive committee of each joint protective board concerned in an industrial controversy may not poll their members for a strike vote until authorized to do so by the district board with the approval of the international president. District boards, when convened with the assistance of the international president, must arrange for a conference between the general managers of railways in-

terested and have authority to make and enter into a settlement. Failing to reach a settlement, the district boards, with the approval of the president, have authority to sanction a strike upon all lines interested, if two-thirds of the members in referendum vote have declared for a strike.

The Bricklayers, Masons and Plasterers' International Union of America is the fifth organization not affiliated with the American Federation of Labor. The constitution of this organization recognizes five causes as essential to a strike: to maintain the standard hours of labor, to decrease the hours of labor, to increase the rate of wages, to resist a threatened reduction of wages and to resist the introduction of non-union conditions.

Where two or more unions in the same trade exist, a joint meeting must be held and a resolution adopted by a two-thirds vote, ordering the transmission to the executive board of a bill of complaint. A subordinate union must transmit to the executive board a "clear, concise and comprehensive statement in writing of all the facts and circumstances connected with the pending trouble or cause of dissatisfaction. This bill of complaint shall, in addition, set forth the efforts made to arbitrate the differences, if any such were attempted."

Upon receipt of a bill of complaint, the executive board, consisting of the president, first vice-president and secretary of the union, must send a special deputy to the scene to investigate fully the alleged matters of complaint. Upon the receipt of a report from the special deputy, the executive board may authorize him to call a strike. Or, the executive board may disapprove the special deputy's recommendations, and if so, it must go to the scene of trouble and personally investigate the complaint, and either sanction or refuse a strike. The decision of the executive board is final.

"We must search for a method of settling industrial disputes upon a basis which will substitute primary agreements for conflict and thus anticipate and render unnecessary the operation of palliative methods," said a representative of the National Association of Builders before the industrial commission in 1901.<sup>5</sup> "Arbitration means the settlement of something in controversy. This is not what we are seeking . . . Mutual agreement before the parties have come to the point of conciliation is the solution of the problem."

A joint agreement between the coal operators and the miners in the Indiana district was referred to in the labor commission's report for 1907-08 as

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<sup>5</sup> Wm. H. Sayward, secretary, *Industrial Commission Report*, Vol. 17, p. 691.



"perhaps the most perfect basis upon which the employer and employee meet to-day," and the Massachusetts board in speaking of the Boot and Shoe Workers' Union, the largest trade organization in Massachusetts, in 1905, remarked: "During the period of seven years since the general organization inaugurated the arbitration contract, factories where such agreements were made have not been seriously disturbed by cessation of work due to any dispute."

Perhaps the greatest difficulty which lies in the way of a speedy and satisfactory settlement of industrial controversies in this country is the unwillingness of employers and employers' organizations to recognize trade unions and deal with their employees through the representatives of trade unions. Questions of wages and working conditions are unimportant matters as compared to this, notwithstanding reports of the Bureau of Labor show more strikes involved the question of wages than any other one subject. The history of strikes and lockouts in the United States is replete with instances of the employer's willingness to concede every contention of his employees but that of hearing them through their regularly chosen representatives in a trade union. When employees have asked for arbitration and this matter was in contention, the almost uniform reply

of the employer has been, "We have nothing to arbitrate."

"The working men have long since learned,"<sup>6</sup> said the New York Board of Mediation and Arbitration, "that when employers refuse to deal with them save as individuals there is really only one side to the case. The best solution of the problem lies in the medium of industrial agreements by which all disputes shall be referred to boards of conciliation and arbitration, made up in part of employers and in part of employees."

The Ohio Board of Arbitration, upon the same occasion,<sup>7</sup> declared that early in a street railway strike in that state "but a single thing prevented the settlement of the dispute by arbitration, namely, the recognition of the union. Neither side could be induced to yield on this question, although both were willing to yield every other."

In its report for 1906, the Ohio board remarked that, "We have frequently come in contact with employers who refuse to recognize or deal with committees or other representatives of their employees, because of their membership in a labor organization.

"We have failed to see any good results from such a course, but on the contrary, have observed harmful consequences in a number of cases."

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<sup>6</sup> *Report of the Industrial Commission*, p. 693.

<sup>7</sup> *Ibid.*, p. 701.

"A difference affecting wages or hours," said the Illinois state board in 1906, "may result without difficulty in compromise, oftentimes by each side granting some contention, but the matter of the policy of the open shop, as contended for by the employer, or closed shop, as oftentimes demanded by the employees, is a matter of fixed principle and precludes at the very outset any grounds of compromise. It is the policy of the open or closed shop that has attended nearly all the differences in the labor problem which have confronted the board of arbitration in Illinois for the past eighteen months.

"The services of the board are tendered no matter what the cause may be. When the open or closed shop is an issue, the services are usually promptly declined by both parties."

In practically every report since 1905, the Massachusetts State Board of Conciliation and Arbitration has commended the trade agreement as an effective means of avoiding disturbances in the industrial world. As early as 1905, there were one hundred seventy trade agreements in force in the boot and shoe industry of Massachusetts and no dispute causing stoppage of work had occurred during the seven preceding years or since the general arbitration contract had been inaugurated.

"Energies once enlisted for strategy and collision sought to establish harmonious relations by means of private adjustments, and when these failed, the trade agreement and public opinion secured the submission

of controversies to the judgment of disinterested minds," the board said in 1908.<sup>8</sup>

The Lawrence strike is the only instance of late years in Massachusetts of rioting and bloodshed. The board was unsuccessful in averting or ending the clash largely because the non-resident mill owners refused to take the initiative and resident managers denied responsibility. Each side laid down inflexible terms of settlement and it was not until a congressional investigation had exposed the horrors of life among the textile workers that anything could be accomplished. And, as the board says,<sup>9</sup> the time required to appease anger, hatred and ill will, was shattered by a rapid succession of startling events, freighted by worse alarms.

Neither the employer nor the employee has been much impressed by the more or less organized effort made to discredit the trade agreement in Massachusetts. It remains to-day as the most practicable method of measuring justice to the respective parties in industry, Capital and Labor; not exact justice, surely, but a measure of justice that fairly well fulfills the ideals of an age when exact justice, if not unattainable, nevertheless is unattained.

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<sup>8</sup> *Annual Report* 1908, p. 1.

<sup>9</sup> *Annual Report* 1911, pp. 9-10.

Of the total number of strikes in the United States from 1881 to 1905, sixty-nine per cent. were ordered by labor organizations and thirty-one per cent. were not so ordered. The Indiana Labor Commission in its first biennial report in speaking of the "strongly organized trades" remarked that "one-third of the differences which arise in the cities of industry where perfect organization exists are conciliated in a manner that avoids strikes and without incurring public notice or expense." But the same commission six years later observed that "it is not apparent that fewer controversies arise with organized workmen than with unorganized, but where organization exists, less difficulty is experienced in adjusting the difference without rupture than with unorganized workmen, for the reason that the former are usually governed by strict anti-strike rules, which are part of the laws of the organization, and which require that effort at settlement be made without a strike. It is also true, as a rule, that where employers and workmen are both organized, the difficulty in the way of adjustments without a strike is still further minimized."

Of the strikes ordered by labor organizations between 1881 and 1905, fifty per cent. were successful, sixteen per cent. were partly successful, and thirty-

four per cent. failed. Of those not so ordered, thirty-four per cent. succeeded, ten per cent. succeeded partly and fifty-six per cent. failed altogether.

Statistics gathered for twenty-five years show that thirty-two per cent. of the strikes were caused by demand for increased wages and nineteen per cent. caused by a demand for recognition of a union or by union rules. Eleven per cent. of the strikes were against reduction in wages. Frequently, however, demands have been made for additional wages because wages represent a tangible grievance, whereas wages was only a minor consideration.<sup>10</sup>

The table on page 319 shows the methods by which industrial disputes in Great Britain from 1903 to 1912 were settled. While the number of disputes settled by arbitration has increased as well as the number settled by conciliation or mediation, direct negotiations between the employer and employee have proved far the most popular method of adjudicating any controversy. Between 1903 and 1912, sixty-eight per cent. of all disputes where a settlement was effected were settled by direct arrangement or negotiation between the parties or

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<sup>10</sup> Statistics of strikes and lockouts in this chapter, except where otherwise noted, are taken from the *21st Annual Report of the Commissioner of Labor in House Documents*, Vol. 110.

their representatives. Only three and six-tenths per cent. were settled by arbitration and only six and six-tenths per cent. by conciliation or mediation. In nine and eight-tenths per cent. of the disputes the employees returned to work on the employers' terms without negotiations and in ten and five-tenths per cent. of the disputes the workers were displaced. The table also shows the number of work people involved in the cases settled by different methods.

An exhaustive study of industrial agreements was made by the Industrial Council of Great Britain and a report made in 1913. The council expressed its approval of collective bargaining based upon mutual consent. It opposed legislation of a compulsory nature affecting either party to an industrial agreement. Monetary penalties to be assessed against individuals or associations violating industrial agreements were found undesirable. Moral influence, the council believed, will generally be adequate for the strict carrying out of agreements. It contended, however, that associations should exercise full disciplinary powers which it thought public opinion would assist. Agreements entered into between associations of employers and of workmen representing a substantial body of those in the trade or district should, on the application of the parties





to the agreement, be made applicable to the whole of the trade or district concerned, the council likewise found. A specimen draft scheme for an industrial agreement is included in the report. The council contended that an industrial agreement should provide that notice of a certain number of days should be given by either party of an intended change affecting conditions as to wages or hours, and that there should be no stoppage of work or alteration of the conditions of employment until an investigation by some agreed tribunal had been made and a pronouncement issued.

## CHAPTER XIV

### CONCLUDING OBSERVATIONS

**N**O student of industrial problems can have surveyed the vast field of agencies with which civilized nations have experimented in their quest of industrial peace without reaching the conclusion that the effort to attain industrial peace has failed somewhat because it has not recognized the necessity of founding that effort on a greater measure of industrial justice.

For a quarter of a century we have been trying to build an ideal superstructure of industrial harmony on the backs of men and women who toiled long hours in unventilated and unsanitary factories. We have sought harmony between Labor and Capital in an era when Labor had very little to lose and everything to gain by extreme measures.

We have set up this scheme and that scheme of industrial conciliation and arbitration in the United States and Europe, but we find all schemes more or less futile. We resort to an artificial process

of respiration but we do not expect the patient to live forever on a few forced draughts of oxygen. We resort to an artificial process in industry and we have, what we might expect, an uncertain and variable result. If we ever succeed in making conciliation and arbitration a successful device we are not going to need the device because it can never be successful as long as men cry out against inhuman conditions in industry, and it will not be much needed when they cease to cry out.

Generally, we have preached the doctrine of "peace at any price"; a doctrine which, interpreted, means that things shall remain as they are. It is the doctrine, the fundamental idea, of ultraconservatives in every country; the hope of the standpatters; the machine gun which sweeps the hillside guarding the mine and factory of intrenched monopolists wherever they may be found.

It is too much to expect longer that Labor shall appear at the shrine of Capital as a supplicant for favors—shorter hours, pure air and a comfortable wage. Yet, until Labor has fully realized its latent strength, just that sort of relationship must obtain. It is illogical. It is unjust. It is almost wholly wrong. Yet with Labor organized, largely, rests the responsibility of a change. Organized Capital

will contribute little to a readjustment because Organized Capital means organized selfishness and the watchword of selfishness is to hold on to what it already has. Organized Labor also means organized selfishness, but it so happens that the selfishness of Organized Labor has enjoyed little opportunity for self-gratification.

Industrial barons in this country still maintain a stoic attitude of indifference, if not contempt, for the missionaries of industrial peace; even when civil war wages fiercely around their Colorado coal mines, and scores are killed. It is these industrial barons, unconsciously no doubt, who are contributing most to the overthrow of the system they would defend.

During the last four centuries, Labor has been the aggressor in the world-wide movement for industrial independence, not only to hold what it had but to gain what its adversary was unwilling to yield and able to resist, unless driven oftentimes by force. Progress, however, has been in one direction only, however slow; little by little has the working man approached the goal of economic independence. Child labor laws, limitation of night work, shorter hours, sanitary and health legislation, monetary compensation for industrial accidents, minimum

wage laws in the sweated industries and collective bargaining, roughly speaking, have marked the stages of progress.

At every stage, Capital has appeared on the scene to contest possession of ground it already occupied and to bewail the assault of demagogues on the sacred rights of property. Now and then a man like Robert Owen, William C. Redfield or Henry Ford has arisen from the ranks of the employers to bestow upon his employees concessions they neither asked nor expected. The exceptions, indeed, are rare. Almost invariably, either force or a demonstration of force has been required by Labor to win primary justice.

In this country, we have tended unconsciously to a theory of society that has its roots in the Norman invasion of England. The invaders, having seized the wealth of the country, consisting principally of land, considered it fitting that the people dispossessed of their property should be nourished by the state and the alms received should be accepted in full payment of the debt due and the wrong done them. The Elizabethan poor tax was an example of state indemnity for land, wealth and positions seized by the Norman noblemen.

Having tolerated monopolistic control of produc-

tion and distribution in the United States, we have the spectacle now of rich and powerful monopolists maintaining at private expense special bureaus in the government departments at Washington; richly endowed foundations for social research; hospitals, libraries, alms houses and universities. In other words, we have the spectacle of certain functions of government being exercised in a large measure by private personages and masking under the name of philanthropy.

In one sense, the movement for so-called social justice is merely an effort of the government to take hold of functions it has permitted individuals to exercise, heretofore with a free hand. It purposes to establish a social justice not compensatory for wrongs done but fundamental to citizenship; a social justice that will attack evils at their inception and not at their outlet, as philanthropic enterprise is wont to do; a social justice, which, having given the wage earner a fair start, still leaves him independent and free to follow the bent of his own inclinations.

Perhaps the era of an industrial democracy is still afar off. No prophecy is advanced on that point. One thing, however, is certain: we are not going to realize industrial peace by any device for

conciliation and arbitration, voluntary or compulsory, until we have given more attention to preparing the ground for this very desirable state of affairs. We are not to expect a "country without strikes" suddenly to be wished upon one hundred million people by the effulgent declamations of vain-glorious idealism or by the medieval memorials of anti-labor-union millionaires. Assuredly, industrial peace is not to be attained by either process.

Given a fairer measure of industrial equality, conciliation and arbitration by state agency will no longer be very necessary because the two dominant factors in industry—Capital and Labor—will then have only minor matters for adjudication and these will be settled mutually, without the interference of the state. Conciliation and arbitration, as understood to-day, presuppose a state of war between Capital and Labor. Remove the cause of the conflict and industrial peace is sure to follow. It will follow, too, in certain ratio to progress in removing basic causes of the conflict. Conciliation and arbitration offer no permanent relief. They do not presume to deal with industrial problems at their source. They merely temper the harshness of contending forces at its outlet. They are palliatives at best and frequently impotent palliatives.

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There is no difference between the functions of conciliation and arbitration. But where the former is effective, it is a reliable sign that the parties have involved no really vital differences.

For the present, the trade agreement is substantially the nearest approach to a satisfactory method of avoiding strikes and lockouts. But the trade agreement presupposes a powerful and well-disciplined body of employees joined together in a permanent organization and acting in concert through regularly chosen officers and committees. Organization, then, is one step toward industrial peace. True, organizations of working men may be misled by rascals entrusted with responsible positions. That, indeed, is unfortunate. But the rascality of labor leaders probably is no greater than the rascality of any other class of leaders, industrial, commercial and political included. Also, the leaders of several strong trade unions—the railroad organizations, the Typographical Union, the Bricklayers, Masons and Plasterers' International Union, the Carpenters', and the United Mine Workers, for instance—will compare favorably in intelligence, self-control and fairness with the most fair-minded of our captains of industry.

While organization goes forward, the state can



do something toward mitigating the harshness of industrial warfare. The federal government may exercise a stricter control over the flood of immigration with which we are annually submerged. Just as a man's first duty is to his family, so is the nation's first duty to the legions of working men who are already domiciled in this country. Hours of labor must be shortened and labor's product must be protected from the encroachments of baronial employers. While not ignoring the tensely practical relation of wages and living, the program by which progress toward industrial peace is to be made a fact should emphasize the permanence of employment as a factor in human happiness. There are two chief causes of unemployment which appear to be antithetical but which in fact are not. They are the lack of vocational training and the present-day intense specialization in industry. The man who can do nothing well is your day-laborer and depends for his subsistence upon the chance wage paid to workers where supply and demand are the determining factors. Here is always found the surplus and if that surplus amounts to an oversupply, it is difficult to find work at a bare living wage. Intense specialization of industry, the dependence of the man upon the machine, is the second great

cause of unemployment. Certain minor factors influence the permanence and prosperity of particular industries, a third cause. In the Westinghouse plant at Pittsburgh, nineteen thousand men were employed in 1907. In 1911, only ten thousand were employed but the output was the same. The introduction of labor-saving machines was responsible. Vocational guidance will determine somewhat in advance the opportunities in particular vocations, and industry must apply itself more seriously to a scientific scheme of vocational guidance if it would avoid the distress occasioned by the substitution of machines for hand labor, a surplus labor market and unemployment.

We do not need to trouble ourselves with such abstract propositions as whether society owes man the right to labor and the right to subsist on his labor. We may content ourselves with the fact that government has safeguarded the possession of property and subsidized business. Its duty to labor, at least, is equal to its past service to property and business.

Markets must be made free to all the people. Fictitious arrangements to control prices either must be regulated or prohibited. Housing and sanitary work shops must receive more attention from the state and municipal governments. Social insurance

must be established as a precaution against pauperism, illiteracy and crime. Women and children must be kept out of the factory almost altogether.

Since the time of Jefferson, millions of acres have been added to the national domain, yet about all the public land is now occupied. A network of railroads, canals and rivers furnish quick transportation over and through the land; factories have appeared at every waterfall, and the bowels of the earth are probed to find coal for the legion of factories grouped in the cities. Our forests have been denuded by the ruthless hand of private enterprise. A long time, we have been a factor in the world's markets. Millions have come to our shores to promote our industrial development, yet beat down our level of wages and standard of living. Great cities have been builded over night, besmirching the wholesome air of the prairie with the filth from squalid tenements. We have taken under our shiftless wings ten million negroes and let them drift with little educational or vocational guidance. We have built civilization—we call it that—on the prehistoric principle that the fittest shall survive. Except for women, we possess the universal franchise of a politically independent people but we have been careless with our political rights and too often

have permitted corruptionists to rule over us. Our natural wealth has been appropriated by our "fit-test" examples of greed under cover of corruption and they have become our industrial barons, who now defy the government which permitted them to rob us.

Is it unnatural that the *sacred* rights of property are being assailed? Is it marvelous that men cry out against a system of peonage maintained by our industrial barons to appease an insatiable greed? Is it strange that echoes from our Tower of Babel fill our hearts with dread of worse things yet to come? Shall we expect—shall we hope that out of this is to come industrial peace?

Lawrence, Calumet and Ludlow are only the beginnings of our industrial warfare. Heretofore, men have fought blindly without common ideals, with no fixed purpose. Such organizations as the I. W. W. have given the workers, misguided as they may be, a philosophy. They have a tangible program now. Their struggle is a struggle for a "cause." It has aspects of a pristine religion. It is more than a religion because it is the religion of empty bellies that cry out for food.

The impression created on the country by one section of a political platform drafted by the con-

vention of a new party in the summer of 1912 was no less profound than the impression created on the nameless followers of the man, who, with a few intimate friends, had written the platform.

That platform, presenting an elaborate scheme for the amelioration of industrial conditions—a scheme with which the sympathies of a great multitude grew as the campaign progressed—is destined to fulfill a great mission. It is destined to lift the veil from the eyes of countless thousands who, theretofore, had no acquaintance with or understanding of the mechanism of a complex industrial state. It was an educational measure espoused by propagandists who knew how to conduct an educational campaign. There was nothing really new in that section of the platform devoted to “Social and Industrial Justice.” It merely reiterated many “demands” contained for many years in the legislative program of the American Federation of Labor and the political demands of the Socialist party.

“Social and Industrial Justice,” so called, is a compromise between the resistance which plutocracy musters to innovations affecting the domination of government in the interests of business and the radical tenets of Socialism—an intermediate step between individualism and collectivism. It purposes

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to temper individualism without accepting the antipodal social structure propagated by the collectivists. It does not abandon the present economic system, even though it purposes to go much farther than government has yet gone in modifying it. It presupposes an organic state of society. It recognizes the substance of the ideals of Socialism without accepting its methods. Its inherent argument is that the realization of its program will eliminate any immediate need of a socialized state. The program of the new party and the collectivist program of the Socialist party proceed from a common starting-point—the admission that our social and industrial structure is out of plumb.

We must not look very much to artificial devices for relief. If we would avoid strikes, we must not expect they are to be avoided by a patchwork program which ignores fundamental causes. We must have a larger measure of "social and industrial justice." We must look carefully to the welfare of the worker—hours, conditions of work and wages. We must assist him in every way possible to become an economically independent unit of society.

Present tendencies are not lacking in inspiration to those persons who demand that our government take hold of public functions, functions which here-

tofore have been exercised largely by private and voluntary associations. We may well believe that these present tendencies foreshadow the advent of a period when the harshness of the industrial conflict will have greatly subsided.

Perhaps the increase in wages has not quite kept pace with the increase in cost of living but the tendency of wages and living has been upward in both cases and the difference may not be especially important. Fourteen out of fifteen of the principal articles of food in the last month of 1913 showed an average increase of seventy-nine and five-tenths per cent. in retail prices as compared with the prices prevailing during the ten-year period from 1890 to 1900. One article of food, sugar, showed a decrease of five and nine-tenths per cent.

Wholesale prices of cloths and clothing have been tending upward for many years. Prices in 1909 were twelve per cent. in advance of prices in 1900. Fuel and lighting show an advance of six and nine-tenths per cent. and house furnishing goods an increase of five and three-tenths per cent. for the same period.

Rents, generally, have shown a substantial advance in the last ten or fifteen years but the increase has not been so great, except in a few cities,

as the increase in other items of living. The Massachusetts Commission on the Cost of Living, which made a report in 1910, found that rents respond more slowly to changed conditions than do many of the commodities of life. Increased rents in Massachusetts, according to the commission, were due to the increased cost of building materials, the increased cost of labor, higher standards of construction fixed by the building laws and a general demand for conveniences which a few years ago were luxuries. The commission estimated the advance in rents for the fifteen years preceding 1910 for working people's dwellings and tenements at twelve per cent. In all probability, this would be pretty near the average increase for the whole country. Certain industrial towns like Birmingham, Pittsburgh and Cleveland might show a higher rate of increase, due to the late abnormal industrial development and the shortage of houses for the working people.

Combining the ten principal occupations in lumber mill work and the furniture industry, wages were twenty-nine per cent. higher in 1912 than in 1890. Wages paid in the principal occupations in the cotton, woolen and silk industries, not including finishing, were sixty-one and five-tenths per cent.



higher in 1912 than in 1890. Wages were thirty-four and eight-tenths per cent. higher per hour in 1912 than in 1890 in the principal occupations in the boot and shoe industry. There was an increase of thirty-six and one-tenth per cent. in the wages per hour in the principal occupations of the hosiery and knit goods manufactories in 1912 as compared to 1890. Wages per hour of eleven principal occupations in the car building industry increased nine and seventy-five-hundredths per cent. from 1907 to 1912. Cigar making and the clothing industries show a considerable increase in wages during the last few years.

In the meantime, hours of labor per week have shown a steady decline amounting to three and eight-tenths per cent. in lumber work and furniture in 1912 as compared to 1890; eight and one-tenth per cent. for the cotton, woolen and silk industries; six and four-tenths per cent. for the boot and shoe industry and seven and nine-tenths per cent. for hosiery and knit goods.

The average price of all food products, weighted according to the average consumption, of various articles in working men's families was twenty-nine and eight-tenths per cent. higher in 1913 than in 1907, while the union scale of wages in the prin-

cipal occupations in the bakery, building, granite and stone mill workers and printing trades was an average of only ten and seven-tenths per cent. higher in 1913 than in 1907. Hours of labor were an average of four and five-tenths per cent. less per week in these trades in 1913 than in 1907.

Unemployment appears to be increasing. According to the census of 1890, fifteen and one-tenth per cent. of all persons having gainful occupations were not employed at such occupations at some time during the year. In 1900, the percentage was twenty-two and three-tenths. In 1902, an average of fourteen and seven-tenths per cent. of the organized working men of New York City were reported idle at the end of each month. In 1911 the percentage was twenty-one and five-tenths. There is a hopeful sign in the attention which several states are giving to this subject. A report of the New York Department of Labor made in 1908 showed that thirty-three per cent. of the membership of trade unions were out of work in January of that year as compared to eighteen per cent., the average for the five years preceding. The total number of unemployed workmen, not including women and children, in the United States for January, 1908, was estimated at two hundred fifty thousand. These

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figures are not meant to be typical but they do show the effect of the business depression which began in 1907. It is estimated that the average miner is out of work one-third of the time in this country and one-fifth of the time in other countries. Fifteen states had established free employment offices in 1913 and there were municipal employment bureaus in eight large cities. Unemployment should be reduced as a consequence of what the federal

TABLE NO. 17

NUMBER AND PERCENTAGE OF MEMBERS OF LABOR UNIONS IDLE,  
1897-1912\*

Year	Throughout first quarter		At the end of March	
	Number	Percentage	Number	Percentage
1897 .....	35,381	24.8	43,654	30.6
1898 .....	18,102	10.1	37,857	21.0
1899 .....	22,658	13.1	31,751	18.3
1900 .....	22,895	10.1	44,336	20.0
1901 .....	26,841	11.3	42,244	18.5
1902 .....	16,776	6.2	36,710	13.6
1903 .....	19,310	5.5	41,941	12.1
1904 .....	55,710	14.6	103,995	27.2
1905 .....	31,638	8.7	54,916	15.1
1906 .....	24,746	6.5	37,237	9.9
1907 .....	55,624	13.8	77,270	19.1
1908 .....	101,466	26.3	138,131	35.7
1909 .....	50,477	14.3	74,543	21.1
1910 .....	28,411	7.3	62,851	16.1
1911 .....	46,021	9.7	96,608	20.3
1912 .....	42,395	9.2	89,718	19.6

\* *Bulletin of New York Department of Labor No. 51, p. 102.*

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TABLE NO. 18

PERCENTAGE OF IDLENESS DUE TO EACH CAUSE, FIRST QUARTER,  
1906-1912\*

	1906	1907	1908	1909	1910	1911	1912
Lack of work..	44.9	67.3	89.6	81.3	66.8	82.7	80.0
Lack of stock..	3.7	2.4	0.4	1.1	4.2	0.6	0.5
Weather .....	28.7	20.0	5.8	10.6	11.7	8.8	9.8
Labor disputes..	12.9	5.2	1.1	2.0	10.9	3.4	4.7
Disability .....	8.1	4.6	2.8	4.6	6.1	3.9	4.6
Other causes...	1.5	0.4	6.2	0.2	0.1	0.4	0.2
Cause not stated	0.2	0.1	0.1	0.2	0.2	0.2	0.2
Total .....	100.0	100.0	100.0	100.0	100.0	100.0	100.0

\* *Bulletin of New York Department of Labor No. 51, p. 103.*

government and the several states are doing to make vocational education and vocational guidance universal and compulsory. It may be found necessary to establish an insurance system against involuntary unemployment.

The last few years have witnessed a rising flood of legislation to control markets, housing, the sanitation of work shops, and woman and child labor. Five states passed minimum wage laws during the legislative sessions of 1913. California, Oregon and Washington created industrial welfare commissions with the power to establish a minimum wage for women and minors, Colorado passed a minimum wage law applying to women and minors, and Utah, by statute, fixed an absolute minimum scale for fe-

male workers. Massachusetts has maintained a commission that is working on the subject since 1912. A score of states have some provision for pensioning dependent mothers. Social insurance against invalidity and old age is growing in popularity. Practically all the great railroads and several industrial corporations now maintain old-age and retirement pension funds in connection with their welfare work, but employees look upon such schemes with suspicion. Louis D. Brandeis has called such schemes a "new form of peonage." It were much better for the states to undertake this work and leave the wage earner free from tacit dependence upon the employer. State insurance against industrial accidents is a part of the new movement to secure independence of the workers against public or private charity.

All such legislation reflects a hopeful sign in the passing of illiteracy. In 1880 the whole number of illiterates in the country was seventeen per cent. of the population ten years of age and over. In 1890 the percentage had risen to twenty-six and seventy-three-hundredths but since that time there has been a gradual decline. In 1900, twenty-one and two-tenths per cent. of the population ten years of age and over was illiterate, while in 1910 the

percentage had decreased by more than one-half, it being only seven and seven-tenths per cent. at the last census.

It is a matter of interest that five and one-tenth per cent. of the urban population, ten years of age and over, is illiterate while the percentage of rural population that is illiterate is ten and one-tenth per cent. Universal compulsory and vocational education will rid the country of this army "with their banners of blackness and darkness inscribed with the legends of illiteracy, ignorance, weakness, helplessness and hopelessness—too large for the safety of our democratic institutions, for the highest good of society and for the greatest degree of material prosperity."

The new movement for special training for definite vocations is the complement of that wise system by which every child in the land is required to obtain a minimum of education for life and wholesome living.

Pauperism has not increased in proportion to the population but the number of inmates of benevolent institutions has increased more than three times as fast as the population since 1890. The abnormal increase in the inmates of benevolent institutions may be attributed to increasing feeble-mindedness

and insanity. Increased feeble-mindedness and insanity are due partially to lax marriage laws, somewhat to intemperance and otherwise to the over-strenuous struggle for existence. The increase in population of the whole country from 1890 to 1910 was forty-seven and three-tenths per cent. Paupers in almshouses increased fifteen and two-tenths per cent. during the same period, while the inmates of benevolent institutions increased one hundred forty-one and two-tenths per cent. The increase of prisoners in institutions and juvenile delinquents was slightly less than the increase in population during the twenty-year period, being forty and four-tenths per cent.

The English board of trade, which made an inquiry into working-class rents, housing, retail prices, rates of wages in certain occupations in the principal industrial towns of the United States in 1909, found "much evidence of an activity of competition among owners and builders and of a degree of material prosperity. . . . tending very widely to raise its standard." Unsatisfactory housing conditions were found among the late immigrants to the United States, particularly among Italian colonies in New York, Chicago and Boston, the Greeks in Lowell, and Poles, Lithuanians and other Slavonic people

in Pittsburgh and Chicago. But powerful influences to improve the housing of working people were found generally. The tendency toward improved conditions was attributed to increasing facilities for transit, the removal of physical barriers by the construction of bridges and tunnels, and the higher standard of demand that follows an increasing prosperity.

"The demand for improved housing itself is, indeed," the board of trade found, "a natural accompaniment to similar changes that are taking place as regards, for instance, amusements, clothing and food, in all of which a great variety appears to be resulting from a vast and an increasingly effective demand."

The passage of the New York tenement house law in 1901 put an end to the building of the dumb-bell type of tenement house in that city. The passage of this act really marked the beginning of the present-day movement for better housing in the United States. For more than a decade, voluntary associations, civic leagues, chambers of commerce, municipal and state commissions have collected and disseminated broadcast valuable information to show the need of better housing. The Federal Bureau of Labor published a special report on *The*



*Housing of the Work People* as early as 1895. In the same year a tenement-house committee of the New York legislature made a report. But a survey of certain tenement-house districts in Boston had been made as early as 1889. The Wisconsin Bureau of Labor and Industrial Statistics devoted much of its 1906 report to the subject of housing. The first national conference on housing was held in 1911, in which year Massachusetts established a commission on homesteads for working people. This commission was continued by the legislatures of 1912 and 1913. Pursuant to an investigation and report by a commission appointed in 1903, New Jersey passed a housing law applying to the whole state. Connecticut passed a housing law in 1905 and Wisconsin in 1907. The first Wisconsin act, having been declared unconstitutional, was followed by two acts in 1909. Chicago, Boston, Baltimore, San Francisco, Los Angeles and Cleveland all had undertaken to regulate the construction of tenement houses before 1910. The ordinances of these cities sought to regulate encumbrances to fire-escapes, stairways, hall and stair partitions, shafts, light and ventilation, height of buildings, areas of yards, courts, rooms and cellars, water supply and water-closet accommodations, overcrowding and sanitation

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generally. Indiana passed an important housing act in 1913.

This varied and nation-wide activity is a sign of hope to those who believe the welfare of the working people comprehends other things besides wages, hours and working conditions in the factory, proper. May we not expect that this wide-spread interest in the home life of people who work for wages will promote at its source the solution of a problem which industrial arbitration deals with but superficially?

As far as industrial conciliation and arbitration are concerned, it appears that they may accomplish something of real merit where employers are far sighted enough and human enough to deal with their employees in a collective capacity. Otherwise, arbitration of whatever kind is foredoomed to failure because the right to organize is one which no arbitration board can well deny with the assurance that its findings will be respected and its award carried out.

Nor does it seem at all possible in this country to prohibit strikes with any measure of success. Strikes seldom occur except under the most aggravated conditions and then the law is little respected by either party.

It is true that strikes and lockouts have been reduced to a minimum in the Australian colonies and New Zealand, but the arbitration laws of those countries were prefaced on the theory that employees and employers were fully organized. Furthermore, there are no sweated industries in those countries, due to the early enactment of minimum wage laws. The theory has prevailed there that no industry is entitled to exist which can not pay a living wage. A wide diversity of nationalities engaged in industry and consequently a varying standard of living—problems we have in the United States—are unknown in the Australian commonwealth and in New Zealand.

The time is coming but it has not yet arrived, when the interests of the third party in an industrial controversy—the public—will be regarded as superior to the present right of the employer to employ whom he will, when he will and pay what he wants to pay; and the right of the employee to work when he will and strike when he does not receive what he thinks he should have. The time has not yet arrived, because the employee, deprived of the right to strike, is at a very serious disadvantage in the present régime of industrial inequality.

He can not afford to arbitrate the question of

whether he shall be permitted to belong to a trade union and he should not be compelled to arbitrate the questions of whether he shall purchase his food and clothing in the company store of his employer and whether he shall be compelled to give up a part of his wages to maintain a hospital or insurance fund. These propositions are so manifestly one-sided and unjust as to be beyond the scope of arbitration. They belong in the same category as the question Mr. Roosevelt had in mind in discussing international peace arbitration when he said the United States should not agree to arbitrate a question of national honor. No opinion, however, is advanced on Mr. Roosevelt's contention.

It is unfortunate that elementary justice must be won at the expense of a strike and therefore at serious discomfort to the public; yet it were better to win justice by a strike than to endure injustice. Also, it may be doubted whether the public is not estopped from pleading its own discomfort so long as it permits aggravated conditions to continue. In all fairness it may be said that a strike is often just what the community, where it occurs, deserves.

Constitutional limitations matter little as far as the ultimate solution of the problem is concerned. These restrictions will pass away, just as the restric-

tions against state laws limiting hours of labor, fixing standards of sanitation and requiring safety devices have passed away. Nor is the contention of the employer tenable that a fundamental right is attacked when he is compelled to abide the opinion of an outside third party, a board of arbitration, as to what he shall pay, how long and under what conditions his employees will work. These rights are not fundamental. They are law given, and by the law they may be taken away.

From the fact that labor is bound to be the aggressor in a majority of industrial disputes, since its mission for the next generation is to raise working standards, it does not seem prudent at this time to impose legal restrictions against the right to strike, even though it were not contrary to the state and federal charters to do so. An exception may be made of transportation companies, upon which the public is vitally dependent, but otherwise it is extremely doubtful whether the Canadian scheme of prohibiting strikes and lockouts before official investigation, is adapted to present industrial and social conditions in this country. It is better not to attempt to restrict the right to strike than to experience the collapse of a scheme, devised for a higher industrial order than ours.

Recent years have seen a tremendous growth in the public utilities of the country, water, light, gas, power and street railway companies. Not only has the exploitation of these enterprises, through stock-jobbing schemes, seriously interfered with the public service but wages have been held at a low level to augment the surplus for dividends on watered stock. Here, again, we must look to basic wrongs, if we are to expect peace.

To sum up briefly the conclusions herein set forth :

1. Neither voluntary nor compulsory arbitration will work with any conspicuous degree of success in this country until the worker has been set free economically; until he is given a compelling voice against his employer as to his wages, hours and working conditions.

2. The worker may be freed economically through the insistence of the state that he be dealt with in a collective capacity, if he so desires; also by legislative measures protecting him against the enormous power his employer wields in the new state of industry; finally, by restrictive and constructive measures such as the minimum wage in sweated industries, stricter immigration standards, sanitary and health standards, social insurance including guaranties against unemployment, and vo-

cational education, including part-time and evening schools.

3. When these steps have been taken the public may well insist upon its right to prevent strikes and lockouts altogether in those industries to which the public looks for daily conveniences. Nor will the public fail to prevent strikes and lockouts, where it is interested in preventing them, if its obligation to the workers of a particular industry has been courageously and completely fulfilled. It is the consciousness of public irresponsibility for the wages and conditions of wage earners that they are able to stop the traffic of a street railway system, for instance, and force concessions from the employer.

4. Compulsory arbitration will fail now because progress toward primary justice for the worker must be accomplished through constant pressure by the working man and his allies. There should be no abatement of proletarian pressure merely because an arbitration board has fixed a term award.

5. Progress must be realized in a steady stream of constructive, humanitarian measures so that the employer may adjust the process of production and distribution to the new and changing standards which an alert social consciousness requires him to maintain. Specifically, if the operation of a new

law is going to increase the cost of a manufactured article, the employer must be permitted to shift the increased cost to the consumer without sudden revulsions in the channels of trade.

6. The Massachusetts or New York system of conciliation and arbitration may accomplish very much toward creating friendly relations between employers and employees and promoting peace in industry. The Wisconsin system may be more practical in states where industry is somewhat less developed.

7. Although we probably suffer more from strikes and lockouts than any other country, we are able to report progress toward basic remedies, in recent years; also some success in making universal the "American standard" of living rather than making universal the lower standard prevailing abroad. These are the sources of our hope, the explanations of our continued faith in political liberty, not as an end in itself, but as a means of gaining a greater measure of economic independence for wage earners.

THE END





## **APPENDIX**



## APPENDIX

INTERNATIONAL ARBITRATION AGREEMENT BETWEEN  
THE AMERICAN NEWSPAPER PUBLISHERS' AS-  
SOCIATION AND THE INTERNATIONAL  
TYPOGRAPHICAL UNION

(Effective May 1, 1912)

**I**T is agreed between the American Newspaper Publishers' Association, by H. N. Kellogg, Charles H. Taylor, Jr., and George C. Hitt, constituting its Special Standing Committee, duly authorized to act in its behalf, and the International Typographical Union, by James M. Lynch, Hugo Miller and John W. Hays, constituting its Executive Council, duly authorized to act in its behalf, as follows:

SECTION 1. On and after May 1, 1912, and until May 1, 1917, any member of the American Newspaper Publishers' Association who is conducting a union department under the jurisdiction of the International Typographical Union shall have the guaranties hereinafter set forth whenever the re-

quirements of this arbitration agreement are observed. This agreement shall cover all contracts with local unions, whether in writing or oral understandings. Oral understandings shall be understood as applying to instances wherein union scales are being paid, but where there are no written agreements covering specified periods of time. Such oral understandings which are not for a definite period may be terminated by either side on thirty days' notice in writing. This agreement shall embrace all contracts of either form which are in effect on April 30, 1912, and contracts of subsequent date which have been approved by the president of the International Typographical Union.

SEC. 2. To acquire the protection of the guaranties embodied in this agreement an Individual Arbitration Contract must be executed in quadruplicate in the form prescribed in this agreement. The holder of such Individual Arbitration Contract shall be entitled to the protection guaranteed by the provisions of this agreement and the terms of the Individual Arbitration Contract in respect to any contract such member may have with a local union of the International Typographical Union.

SEC. 3. Any publisher who holds an Individual Arbitration Contract under the prior agreement be-

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tween the parties hereto which terminates May 1, 1912, shall be protected hereunder if before May 1, 1912, he shall have secured an Individual Arbitration Contract in accordance with the provisions of this agreement, as set forth in section 1 of the Code of Procedure.

SEC. 4. Subject to the conditions hereinbefore prescribed every member of the American Newspaper Publishers' Association holding an Individual Arbitration Contract shall have the following guaranties:

(a) He shall be protected against walk-outs, strikes or boycotts by the members of the union or unions with which he has contractual relations under this agreement and against any other form of concerted interference by them with the usual and regular operation of any of his departments of labor.

(b) In the event of a difference arising between a publisher having an Individual Arbitration Contract and any local union a party thereto, all work shall continue without interruption pending proceedings looking to conciliation or arbitration, either local or international, and the wages, hours and working conditions prevailing at the time the difference arises shall be preserved unchanged until a final decision of the matter at issue shall be reached.

(c) All differences which can not be settled by conciliation shall be referred to arbitration in the manner stipulated in this agreement.

SEC. 5. All differences arising under an existing written contract, or an oral understanding, which involve the application of the International Arbitration Agreement, the Code of Procedure, or any clause or clauses in contracts, or the interpretation to be placed upon any part or parts, of any agreements, which can not be settled by conciliation, shall be referred to local arbitration if so required by the local contract, but if not shall be submitted to the chairman of the Special Standing Committee of the American Newspaper Publishers' Association and the president of the International Typographical Union, together with the arguments and briefs of both parties, and an agreed statement of facts in the controversy, accompanied by a joint letter of transmittal, certifying that each party is familiar with the contents of all documents. In case these two officials can not reach a decision upon the issues involved, their differences shall be submitted to the International Board of Arbitration.

SEC. 6. All differences other than those specified in section 5 of this agreement, including disagreements arising in negotiations for a new scale of

wages, or for hours of labor, or in renewing or extending an existing scale, or in respect to a contract, which can not be settled by conciliation, shall be referred to a local board of arbitration in the manner stipulated in the Code of Procedure as set forth in Exhibit "B."

SEC. 7. The question whether a department shall be union or non-union shall not be classed as a "difference" to be arbitrated. Union departments shall be understood to mean such as are made up of union employees and in which the union has been formally recognized by the employer.

SEC. 8. If either party to a local arbitration shall be dissatisfied with a decision by a local board appeal may be taken to the International Board of Arbitration to be constituted as hereinafter provided. Such appeal may also be taken to the International Board by either party if for any cause a decision shall not have been rendered by a local board within ninety days after the questions to be arbitrated have been duly determined under the Code of Procedure.

SEC. 9. Local union laws not affecting wages, hours and working conditions and the laws of the International Typographical Union shall not be



subject to the provisions of this arbitration agreement: provided, that International or local laws enacted subsequent to the execution of an individual arbitration or local contract shall not affect either contract during its life.

SEC. 10. The International Board of Arbitration shall consist of the three members of the executive council of the International Typographical Union and the three members of the Special Standing Committee of the American Newspaper Publishers' Association, or their proxies. This board shall meet at such time and place as may be determined by it. Due notice of time and place of meeting of the International Board shall be given all interested parties. If the board as thus constituted is unable after considering a case at two meetings, to reach a decision, the membership of the board may be increased, by unanimous vote, by the addition of a seventh and disinterested member, who shall act only on the matters that made his selection necessary, and who shall have the same standing as the other members, and shall act with them at the earliest possible date after his appointment.

SEC. 11. The award of the International Board of Arbitration in all cases shall include a determina-

tion of all the issues involved; it shall cover the full period between the raising of the issues and their final settlement; any change in the wage scale may be made effective from the date the issue first arose at the discretion of the board. An award by a majority of the International Board shall be final, and shall be accepted as such by the parties to the dispute.

SEC. 12. At the request of either party to an arbitration the International Board shall determine whether evasion, collusion or fraud, has characterized either the local, or international proceedings, or whether either party has failed to comply with, or refuses to fulfill its obligations under a decision, or has omitted to perform any duty prescribed therein, or has secured any unfair or fraudulent advantage, or has evaded any provision of this agreement or any rule of the Code of Procedure, or is not acting in good faith. At the conclusion of such inquiry it shall be wholly within the power of the International Board to reject all that has been previously done and order a rehearing before the International Board or before a new local board; or it may find against the offending party or annul the individual arbitration contract. In the event of

either party to a dispute refusing to accept and comply with a decision of a local board which is not appealed, or with a decision of the International Board, or with any of the provisions of this International Arbitration Agreement, as determined by a decision of the International Board, all aid and support to the employer or the local union refusing acceptance and compliance shall be withdrawn by both parties to this agreement. The acts of such recalcitrant employer or union shall be publicly disavowed and the aggrieved party shall be furnished by the other with an official document to that effect.

SEC. 13. The form of Individual Arbitration Contract set forth in Exhibit "A" and the Code of Procedure set forth in Exhibit "B" are hereby made a part of this agreement and shall be as binding on the parties hereto as if the same were set forth at length herein.

SEC. 14. This agreement shall remain in effect from the 1st day of May, 1912, to the 30th day of April, 1917, inclusive, but amendments may be proposed at any meeting of the International Board of Arbitration by either party hereto, and on acceptance by the other party to this agreement shall become a part hereof.

In witness whereof, the undersigned have affixed their respective signatures in quadruplicate this 11th day of January, 1912.

H. N. KELLOGG,  
CHARLES H. TAYLOR, JR.,  
GEORGE C. HITT,

Special Standing Committee American News-  
paper Publishers' Association.

JAMES M. LYNCH,  
HUGO MILLER,  
JOHN W. HAYS,

Executive Council International Typographical  
Union.

EXHIBIT A

*Individual Arbitration Contract*

It is agreed between ..... proprietor of the  
..... party of the first part and .....  
Union No....., of ..... party of the second  
part, by its president duly authorized to act in its  
behalf as follows:

SECTION 1. In the event of any difference arising between the parties to this contract which can not be adjusted by conciliation, such difference shall be submitted to arbitration under the Code of Procedure provided by the International Arbitration Agreement, effective May 1, 1912, between the

'American Newspaper Publishers' Association and the International Typographical Union.

SEC. 2. This contract shall cover any contract between the parties of the first and second parts whether the same is in writing or an oral understanding, subject to the conditions expressed in the International Arbitration Agreement, effective May 1, 1912, between the American Newspaper Publishers' Association and the International Typographical Union.

SEC. 3. It is expressly understood and agreed that the International Arbitration Agreement and the Code of Procedure, both hereunto attached, between the American Newspaper Publishers' Association and the International Typographical Union, shall be integral parts of this contract and shall have the same force and effect as though set forth in the contract itself.

SEC. 4. The parties hereto specifically authorize the Executive Council of the International Typographical Union and the Special Standing Committee of the American Newspaper Publishers' Association to give public disavowal to any failure to comply with this contract as provided in section 12 of the International Arbitration Agreement.

This contract shall be in full force and effect on

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the ..... day of ....., 19...., and continue until the 30th day of April, 1917, inclusive.

In witness whereof the undersigned proprietor of the said newspaper, and the president of the ..... Union No. .... have hereunto affixed their respective signatures this .... day of ....., 19..

Witness as to Proprietor: Proprietor.

.....  
.....  
President.....Union No.....

Witness as to President:  
.....  
Secretary.....Union No.....

The American Newspaper Publishers' Association, by the chairman of its special standing committee, duly authorized to act in its behalf, hereby underwrites the obligations assumed by the party of the first part under this agreement, and guarantees their fulfillment.

.....  
Chairman Special Standing Committee American Newspaper Publishers' Association.

Witness as to Chairman:  
.....

The International Typographical Union by its president, duly authorized to act in its behalf, hereby underwrites the obligations assumed by the party of the second part under this agreement, and guarantees their fulfillment.

.....

President International Typographical Union.

Witness as to President:

.....

#### EXHIBIT B

##### *Code of Procedure*

SECTION 1. If a publisher holding an Individual Arbitration Contract under the prior agreement between the parties hereto, which terminates May 1, 1912, desires to secure continuous protection, he shall not later than March 1, 1912, notify the president of the union operating in the department he wishes the contract to cover of his desire to secure an Individual Arbitration Contract to be effective from May 1, 1912, to April 30, 1917, inclusive. If the issuance of an Individual Arbitration Contract as above is satisfactory to the said union the parties shall execute in quadruplicate an Individual Arbitration Contract, as set forth in Exhibit "A," before May 1, 1912.

Publishers of this class securing Individual Arbitration Contracts effective from May 1, 1912, until April 30, 1917, inclusive, shall have continuous protection for the departments to which said Individual Arbitration Contracts apply.

SEC. 2. If a publisher shall not have had an Individual Arbitration Contract of date prior to May 1, 1912, but shall have secured a contract on that or some date subsequent thereto, this Code of Procedure shall apply to all differences between such publisher and the union covered by the Individual Arbitration Contract, which arise after sixty (60) days shall have elapsed from the date of signing the said contract. No new issue shall be raised by either party until at least sixty (60) days shall have elapsed from the date of signing the said contract. A publisher desiring an Individual Arbitration Contract shall notify the president of the union operating in the department he wishes the contract to cover, of his desire to secure an Individual Arbitration Contract to be effective until April 30, 1917, inclusive. If the issuance of an Individual Arbitration Contract as above set forth is satisfactory to said union, the parties shall execute in quadruplicate an Individual Arbitration Contract as set forth in Exhibit "A."



SEC. 3. If there are pending any issues (a new scale of prices, a change of scale or contract, or differences of any nature) between a publisher to whom the conditions apply as set forth in section 2 of this code, and the union with which he wishes to make an Individual Arbitration Contract, of which issues notice in writing has been given within sixty (60) days of the date of the notice by the publisher of his desire to obtain an Individual Arbitration Contract as provided in section 2 of this code, all such issues shall be exempt from arbitration. A certificate setting forth the pending issues shall be executed in quadruplicate, signed by the publisher and the president of the union, and one copy of the certificate shall be attached to each copy of the Individual Arbitration Contract.

SEC. 4. An issue is raised at the time a written request is made by either party presenting in detail changes in conditions desired.

#### *Local Arbitration*

SEC. 5. The two parties in interest must have a conference as soon as possible and not later than sixty (60) days after an issue is raised, at which conference (or continuation thereof) every effort to agree shall be made. The party upon whom the

original demand is made may present a counter proposition, provided it be submitted in writing and in detail, which counter proposition shall be submitted as soon as possible, and in any event within the same period of sixty (60) days.

SEC. 6. Upon failure to agree, each party shall prepare its statement, embracing the conditions that it seeks to establish. Each statement must be complete in itself, and copies thereof shall be forwarded to the chairman of the Special Standing Committee of the American Newspaper Publishers' Association and the president of the International Typographical Union, accompanied by a letter of transmittal, to be signed jointly by the parties in interest, certifying that they are acquainted with the contents of both statements. The chairman and president shall thereupon determine the questions or subjects which can be properly submitted to arbitration, and shall promptly notify by joint letters the interested parties of their decision. In case the two officials can not agree, their differences shall be submitted to the International Board of Arbitration.

SEC. 7. After the questions to be arbitrated have been determined a Local Board of Arbitration must be formed composed of residents of the locality in which the controversy arises, two members thereof

to be named by each side, one such representative of each contending party to be free from personal connection with or direct interest in any newspaper or any labor union. The board as thus constituted shall select a secretary from among its members. The four members of the board shall then choose an additional member, who shall be a disinterested party, and shall act as chairman of the board. If the chairman of the local board shall not have been selected within thirty (30) days after the questions to be arbitrated have been determined, he shall be named by the chairman of the Special Standing Committee of the American Newspaper Publishers' Association and the president of the International Typographical Union, or their proxies, upon the request of either of the interested parties. The two officials named, or their proxies, may for this purpose visit the locality if they deem it necessary. Any expense thus incurred shall be defrayed equally by the parties to the controversy. The chairman of the local board shall preside, put motions, etc., and shall be entitled to vote on all propositions which may properly come before the board in open session. He shall declare a motion carried only when at least three of the arbitrators shall have voted affirmatively thereon. At the conclusion of the hearing the chair-

man shall retire and the other members of the board shall go into executive session and immediately take up a consideration of the issues involved. If in executive session a tie vote occurs on any proposition, or if there are any differences, questions or propositions which do not receive the votes of three of the four original members of the board, the chairman shall be called in to cast the deciding votes on all unsettled questions or propositions.

SEC. 8. After the Local Board of Arbitration has been organized it shall proceed forthwith to conduct its hearings under the following rules:

1. It may demand duplicate typewritten statements of grievances.
2. It may examine all parties involved in any differences referred to it for adjudication.
3. It shall employ such stenographers, etc., as may be necessary to facilitate business, and to provide a record for use in the event of an appeal, said record to be properly paged and indexed.
4. It may require affidavits on all disputed points.
5. It shall have free access to all books and records bearing on points at issue.

6. Equal opportunity shall be allowed for presentation of evidence and argument.

7. In event of either party to the dispute refusing to appear or present its case after due notice, it may be adjudged in default, and decision shall then be rendered against such party.

8. All evidence communicated to the board in confidence shall be preserved inviolate and no record of such evidence shall be kept, except for use on appeal, in which case such inviolability shall be preserved.

9. The party making the original demand shall have the right to present its case and evidence without interruption, excepting that when oral evidence is introduced cross-examination of witnesses shall be allowed. The opposing party shall have the same right in turn. The first party shall then have the right to present evidence strictly in rebuttal and the opposing party shall be allowed to present counter evidence strictly in surrebuttal. When objection is made by either party to the admission of any evidence offered by the other party, the board by vote shall decide as to the admissability of the evidence in question.

10. In case of the inability of either side to present evidence at the moment, the order may be varied to the extent of allowing such evidence to be presented at such session as may be agreed upon by the parties to the controversy, or as may be ordered by the Local Board of Arbitration. No evidence shall be received or considered that was not presented at a regular open session of the board, except that it shall be allowable for the members of the board, in any case, to visit any office to see the operation of labor therein, or for any other necessary purpose, to aid in arriving at a just decision.

11. Oral arguments may be limited to one speech on each side, after all evidence has been presented. Written pleadings, instead of oral arguments, shall be allowed whenever agreed upon by the parties to the controversy, or whenever ordered by the Local Board of Arbitration.

12. There shall be an agreement by at least a majority of the members of the board as to the exact time and place of hearing, of which both parties shall be notified in season. The session shall be continuous, except for necessary intermissions, until the hearing is concluded.

SEC. 9. When a hearing is concluded the board

shall, without unnecessary delay, and as set forth in section 7 of this code, go into executive session, from which all persons except the four original members of the board shall be excluded, for the determination of its award. In its deliberation the transcript of the stenographic report shall be accepted as the best evidence of what occurred at the hearing, unless it be shown that gross errors exist in said transcript. Should the four members be unable to decide upon the award the chairman shall be called in, as provided in section 7 of this code. The award of the board must be formulated and signed by all of the members thereof at a regular executive session, after there has been full opportunity for consideration and discussion, the date and time of such session having previously been determined at a full meeting of the local board. If any member of the local board dissents from the award, and wishes to file a dissenting opinion, he shall give immediate notice to that effect, and shall, within forty-eight (48) hours after the award has been decided upon, and before it has been promulgated, formulate his reasons for dissenting, and such opinion must be signed by him before final adjournment at a regular executive session, arranged for as above provided. Such dissenting opinion, when thus signed, must be attached to the award.

SEC. 10. The local board shall not be compelled to set forth its reasons for making the award, but may do so in the written award only. In framing its award the findings shall be expressed in detail, to the end that no misunderstanding shall afterward occur. An award of a local board shall be for at least one year, but a local board may provide that its award shall be effective for a longer period, not to exceed three years; provided there is no local agreement as to time.

SEC. 11. All expenses of a Local Arbitration Board shall be divided equally between the union and the other interested party or parties.

#### *National Arbitration*

SEC. 12. When either party to a local arbitration shall desire to appeal to the International Board written notice to that effect must be given to the other party within five (5) days after the local decision has been rendered, and the appeal shall be filed with the International Board within thirty (30) days after such decision. When an appeal is under consideration by the International Board of Arbitration it shall not take evidence, but both parties to the controversy may appear personally or may submit the records and briefs of the local hearing and make





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